Congressional action is needed to ensure the safety of Americans abroad and to protect the international reputation of the United States

Why is congressional action needed?

The Vienna Convention on Consular Relations, a treaty ratified by the United States and thus part of U.S. law, ensures the rights of foreign nationals to have access to consular assistance without delay and of consulates to assist their citizens abroad. The United States is currently in violation of its international treaty obligations in the cases of certain Mexican nationals. The International Court of Justice (ICJ) – which the United States designated as the court with jurisdiction to resolve international disputes regarding the Vienna Convention – has determined that the United States can remedy these violations by granting judicial hearings to determine whether prejudice resulted from the failure to provide consular access to the Mexican nationals named in the Avena case. In the U.S. Supreme Court's recent decision in *Medellín v. Texas,* the Court unanimously found that complying with the ICJ judgment is an international legal obligation of the United States. The Court then determined that Congress can act to implement this binding legal obligation across the United States.

What would the proposed legislation do?

The proposed legislation would bring the United States into compliance with its international obligations by directing the federal courts to hold a review hearing in these cases to determine whether the defendants were prejudiced by their lack of consular access.

Congress must act without delay in order to fulfill the United States' treaty obligations and thus ensure the safety of Americans abroad, and to preserve the reputation of the United States as a reliable international partner that respects the rule of law.

As the Supreme Court observed, the reasons for implementing the ICJ decision are "plainly compelling." The consequences of non-compliance are potentially far-reaching: if the United States refuses to uphold its treaty obligations, other parties could invoke that non-compliance as justification for ignoring their obligations under the same treaty.

The security of Americans abroad is clearly and directly at risk. The Vienna Convention on Consular Relations is critical to the safety of Americans who travel, live and work in other countries around the world: missionaries, Peace Corps volunteers, tourists, business travelers, foreign exchange students, members of the military, U.S. diplomats, and countless others. Being detained by foreign authorities, especially in a country where one does not know the laws or language, can be extremely dangerous to Americans abroad. The United States thus insists that other countries grant Americans the right to consular access. For example, in 2001 when a U.S. Navy surveillance plane made an emergency landing in Chinese territory after colliding with a Chinese jet, the State Department cited the Vienna Convention in demanding immediate consular access to the plane's crew. Chinese authorities responded by granting consular visits to the crew members, who were detained in China for 11 days.

As a nation that believes in the rule of law, the United States must fulfill its undisputed treaty obligations in these cases. Failure to honor our universally-recognized treaty obligations will erode global confidence in the enforceability of the United States' international commitments across a broad range of subjects: foreign relations, international business dealings, trade and investment agreements, and other global affairs.

Congress should act promptly to adopt legislation implementing the limited remedies that will fulfill the nation's treaty obligations. The minor inconvenience to our federal courts of granting judicial review in the cases of a few dozen Mexican nationals pales in comparison to the threat to the security of American citizens abroad and the potential damage to our standing as a world leader that would result if the United States breaks its promise to live up to its international commitments.

For more information, please contact Katharine Huffman (khuffman@rabengroup.com, 202-466-2479) or William E. Moschella (wmoschella@bhfs.com, 202-652-2346).

This information is provided on behalf of the Embassy of Mexico.

EXPLANATORY STATEMENT

I. Purpose of Legislation

The proposed legislation will fulfill the United States's international legal obligations under the U.N. Charter, the ICJ Statute and the Vienna Convention on Consular Relations (VCCR), and will ensure that our treaty partners continue to provide consular access to Americans detained overseas. Specifically, the proposed legislation will implement the judgment of the International Court of Justice in *Avena and Other Mexican Nationals* by providing federal judicial review of a limited number of cases in which the United States failed to comply with its obligation to advise Mexican nationals of their rights to consular notification under Article 36 of the Vienna Convention on Consular Relations.

II. Background

A. U.S. Treaty Obligations

Ratified by over 170 countries, the VCCR regulates the establishment and functions of consulates worldwide. Article 36 of the VCCR governs consular communication and contact with foreign nationals – including American citizens who are detained overseas. Whenever foreigners are detained, arrested or imprisoned, the authorities must inform them without delay of their right to communicate with their consulate and to have the consulate notified of their detention. At the request of the foreign national, the consulate must then be notified without delay. Article 36 also confers on consulates the right to communicate with, visit and offer assistance to their detained nationals, including the right to arrange for their legal representation. The article further requires that local laws and regulations must enable full effect to be given to the rights accorded to detained foreigners and their consular representatives.

Timely access to consular assistance is crucially important whenever individuals face prosecution under a foreign and often unfamiliar legal system. For example, U.S. consulates provide arrested Americans with a list of qualified local attorneys, explain local legal procedures and the rights accorded to the accused, ensure contact with family and friends, protest any discriminatory or abusive treatment, and monitor their well-being throughout their incarceration.

Article 36 rights and obligations are entirely reciprocal in nature. As Secretary of State Madeleine Albright wrote in 1998, the ability of U.S. consulates "to provide such assistance is heavily dependent . . .on the extent to which foreign governments honor their consular notification obligations to us. At the same time, we must be prepared to accord other countries the same scrupulous observance of consular notification requirements that we expect them to accord the United States and its citizens abroad."

The United States ratified the VCCR without reservations in 1969, on the understanding that its provisions would be entirely self-executing and would prevail over any conflicting state laws. Although the treaty thus became part of the supreme law of the land, domestic compliance with Article 36 obligations has long been shockingly deficient – even in cases where foreign

nationals would face the death penalty if convicted.

In 1969, the United States also unconditionally ratified the VCCR Optional Protocol concerning the Compulsory Settlement of Disputes, whereby disagreements over the interpretation or application of Article 36 fall under the compulsory jurisdiction of the International Court of Justice (ICJ). The ICJ is the principal judicial organ of the United Nations. Under Article 59 of the ICJ Statute, its decisions in such cases are binding on the parties to the dispute; under Article 94 (1) of the UN Charter, each member nation undertakes to comply with any ICJ decision to which it is a party. The United States was the first nation to bring a case under the VCCR Optional Protocol, in response to the seizure of U.S. diplomatic and consular personnel in Iran in 1979. The ICJ ruled in favor of the United States, whereupon the U.S. asserted the binding nature of that judgment and insisted that Iran comply with the decision.

B. *Avena* ICJ Litigation

In January 2003, Mexico brought a case before the International Court of Justice on behalf of a group of Mexican nationals who had been sentenced to death without being promptly advised of their consular rights. Mexico asked the Court to consider whether these Mexican nationals were entitled to a legal remedy for the violation of Article 36 of the Vienna Convention on Consular Relations. The United States participated fully in the case, which was entitled *Avena and Other Mexican Nationals.*

In those proceedings, Mexico did not call into question either the heinous nature of the crimes that the defendants were convicted of, or the legitimacy of the death penalty. Rather, Mexico sought to ensure that each of its nationals received the protections to which he was entitled under domestic and international law.

The ICJ issued its final judgment on March 31, 2004. The ICJ found Article 36 violations in 51 of the 52 cases that it reviewed. The ICJ rejected Mexico's request that the convictions and death sentences of the Mexican nationals be vacated. Instead, the Court held that U.S. courts must provide "review and reconsideration" of the convictions and sentences to determine in each case if the Article 36 violation was harmful to the defendant. The ICJ held that the remedy of "review and reconsideration" applied to all 51 cases, including those where the VCCR claim would otherwise be procedurally defaulted.

C. *Medellín I* and the Position of the Bush Administration

In 2004, in the case of *Medellín v. Dretke,* the U.S. Supreme Court agreed to consider whether the *Avena* Judgment should be enforced by domestic courts. Before the Court heard oral argument in the case, however, President Bush issued a memorandum addressed to the U.S. Attorney General stating:

> I have determined, pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, that the United States will discharge its international obligations under [*Avena*] by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision.

In a brief filed with the Supreme Court, the U.S. Solicitor General explained that compliance with *Avena* "serves to protect the interests of United States citizens abroad, promotes the effective conduct of foreign relations, and underscores the United States' commitment in the international community to the rule of law."

The Supreme Court decided not to rule on the merits of the case and instead found that Mr. Medellín's newly-filed state habeas petition based on *Avena* and the Presidential memorandum should first be considered by the Texas courts.

In 2005, the United States withdrew from the VCCR Optional Protocol concerning the Compulsory Settlement of Disputes through an action of the Executive Branch. By withdrawing from the Optional Protocol, the Bush Administration sought to limit other countries from obtaining similar judgments in the future. Even after withdrawing from the Optional Protocol, however, the Executive Branch continued to assert that it was bound to uphold the *Avena* Judgment and to provide review and reconsideration to the Mexican nationals named in that Judgment.

D. The U.S. Supreme Court Decision in *Medellín II*

After the Texas courts found that neither *Avena* nor the Presidential Memorandum were binding federal law that would prevail over state procedural bars regarding the filing of new habeas petitions, the Supreme Court again agreed to review Mr. Medellín's case.

In their briefings to the Supreme Court, all parties – including Texas – agreed that U.S. compliance with *Avena* is a binding international obligation; the only dispute between the parties was over the appropriate means of securing its domestic enforcement.

The Supreme Court issued its decision in *Medellín v. Texas* on March 25, 2008. The Court held that *Avena* is not directly enforceable in the domestic courts because none of the relevant treaty sources – the VCCR Optional Protocol, the U.N. Charter, or the ICJ Statute – create binding federal law in the absence of implementing legislation, and no such legislation has been enacted by Congress. The Supreme Court also held that the President did not have the authority to implement *Avena* unilaterally and that Congress had not acquiesced in the exercise of that authority. Independent of the United States' treaty obligations, the Memorandum was not a valid exercise of the President's foreign affairs authority to resolve disputes with foreign nations.

While the majority, concurring and dissenting opinions differed widely in their approaches to the legal questions presented, there was unanimous agreement that compliance with *Avena* is an international legal obligation of the United States and that Congress has the authority to implement that obligation. The majority opinion cites examples of other forms of binding international arbitration given domestic effect by Congressional implementation. The Court was also unanimous in recognizing the importance of securing compliance with *Avena*. In the words of the concurring opinion:

> On the other hand, the costs of refusing to respect the ICJ's judgment are significant. The entire Court and the President agree that breach will jeopardize

the United States' "plainly compelling" interests in "ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law."

E. Recent Developments

Responding to Mexico's request for an interpretation of the *Avena* Judgment, the ICJ reaffirmed the "continuing binding character of the obligations of the United States" to provide judicial review and reconsideration in the cases of the affected Mexican nationals. In its ruling of January 19, 2009, the ICJ took note of "the undertakings given by the United States of America in these proceedings" that the U.S. fully recognizes its obligation to comply, and held that the United States must "rapidly turn to alternative and effective means of attaining that result." The Court also observed that compliance could be secured through "the introduction within a reasonable time of appropriate legislation, if deemed necessary under domestic constitutional law. "

The enforceability of U.S. treaty commitments in the aftermath of the *Medellin* decision became the focal point of a landmark decision by the Philippine Supreme Court. Ruling in the case of a US Marine convicted of raping a Filipino woman, the Court ordered the government to "forthwith negotiate with the United States representatives" for the surrender of the Marine to "detention facilities under Philippine authorities," citing the requirements of the bilateral Visiting Forces Agreement (VFA). The majority opinion and the dissents treated the *Medellin* requirement of Congressional implementation of treaty obligations as pivotal in determining the constitutionality of the VFA. For example, the Chief Justice wrote in dissent:

> "It would be naïve and foolish for the Philippines, or for any other State for that matter, to implement as part of its domestic law a treaty that the United States does not recognize as part of its own domestic law. That would only give the United States the "unqualified right" to free itself from liability for any breach of its own obligation under the treaty, despite an adverse ruling from the ICJ."

III. Conclusion: Congressional Action is Needed

As the Supreme Court held in *Medellín II*, "the responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress, not the Executive." The proposed legislation would fulfill the United States' core obligations under *Avena* without impinging on the rights or functions of the state courts and without creating any new avenue for potential judicial relief that would apply beyond the limited number of cases addressed by the ICJ decision. The proposed legislation also complies fully with the guidance to Congress provided by the Supreme Court in *Medellín v. Texas ("Medellín II")*.

IV. Budgetary Impact [DRAFT - OPTIONAL AT THIS STAGE]

The proposed legislation is budget-neutral, and thus will not impact any "pay-go" requirements. The proposed legislation is not an undue burden or "unfunded mandate" upon any State, as it will not require any significant funds to be expended by State fiscs in any of the States where review and reconsideration in the federal courts would occur.

Summary (by state) of Mexican Nationals affected by the Avena Judgment

California: 27 named in the judgment, 26 still on death row. The other, Carrera Montenegro, has had his death sentence vacated, but is still appealing his conviction.

Texas: 15 named in the judgment, 12 are still on death row. One had his sentenced commuted because he was a juvenile (Soriano), another had his sentence commuted because of mental retardation (Plata), and a third was executed on August 5, 2008 (Medellín).

Illinois: 3 named in the judgment, all had their sentences commuted to life by Governor Ryan.

Ohio: 1 named in the judgment, still on death row.

Oregon: 1 named in the judgment, still on death row.

Arizona: 1 named in the judgment, sentence was commuted (juvenile).

Arkansas: 1 named in the judgment, sentence was commuted by agreement between prosecution and defense.

Nevada: 1 named in the judgment, still on death row.

Oklahoma: 1 named in the judgment. *He has already received review and reconsideration and his sentence was commuted to life.*

This information is provided on behalf of the Embassy of Mexico.

Summary of the cases entitled to "review and reconsideration" under *Avena and Other Mexican Nationals*

> "No one disputes that the *Avena* decision—a decision that flows from the treaties through which the United States submitted to ICJ jurisdiction with respect to Vienna Convention disputes—constitutes an international law obligation on the part of the United States."
> *Medellin v. Texas,* 128 S. Ct. 1346, 1356 (U.S. 2008)

Overview

In *Avena and Other Mexican Nationals*, the International Court of Justice (ICJ) held that the United States had breached its consular information, notification and access obligations under Article 36 of the Vienna Convention on Consular Relations (VCCR), in the cases of 51 Mexican nationals.

First, the ICJ found that the United States had violated the core element of Article 36(1)(b) in all 51 cases, by failing "to inform detained Mexican nationals of their rights [to consular notification and communication] under that paragraph..." *Avena* Judgment, ¶¶ 106(1), 153(4).

The ICJ further held that in 49 cases, the United States had also violated its obligations under Article 36(1)(a) "to enable Mexican consular officers to communicate with and have access to their nationals," its duty under Article 36(1)(b) "to notify the Mexican consular post of the detention" and its responsibility under paragraph 1(c) "regarding the right of consular officers to visit their detained nationals." *Id.* ¶¶ 106(2)-(3), 153(5)-(6).

In 34 cases, the ICJ found that the United States had also violated its obligation "under paragraph 1(c) of that Article to enable Mexican consular officers to arrange for legal representation of their nationals...". *Id.* ¶¶ 106(4), 153(7).

Finally, in 3 cases the ICJ found that "the United States is in breach of the obligations incumbent upon it under Article 36, paragraph 2" (requiring local laws to give "full effect" to Article 36 rights) because "there is no further possibility of judicial re-examination of those cases" and thus no opportunity to remedy the Vienna Convention violations. *Id.* 153(8), 113.

The Executive Branch has summarized the effect of the *Avena* Judgment as placing the United States "under an international obligation to choose a means for 51 individuals to receive review and reconsideration of their convictions and sentences to determine whether the denial of the Article 36 rights identified by the ICJ caused actual prejudice to the defense either at trial or at sentencing."[1]

The ICJ determined that the procedural remedy of "review and reconsideration" should take place as part of the "judicial process" and must "examine the facts, and in particular the

[1] Brief for the United States as Amicus Curiae Supporting Respondent at 40, *Medellin v. Dretke*, 544 U.S. 660 (2005).

prejudice and its causes, taking account of the violation of the rights set forth in the Convention." *Avena* ¶¶139, 140. The Court emphasized that "what is crucial in the review and reconsideration process is the existence of a procedure which guarantees that full weight is given to the violation of the rights set forth in the Vienna Convention, whatever may be the actual outcome" of the judicial review. *Id.* ¶139.

Individual case summaries[2]

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I. A DETAILED LOOK AT TWO OF THE *AVENA* CASES

Fierro Reyna, César Roberto

Case facts: On 1 August 1979, Texas authorities arrested César Fierro, aged 22, on suspicion of the murder of an El Paso taxi cab driver.

Five months after the homicide, a mentally disturbed juvenile offender approached the El Paso police claiming that he had been a passenger in the victim's cab and had witnessed Mr. Fierro commit the murder. After discovering that Mr. Fierro was a Mexican national and resident of Ciudad Juarez, El Paso detectives met with the commander of the Juarez police. Shortly after this meeting, the Juarez police abducted and jailed Mr. Fierro's parents.

The El Paso police then arrested Mr. Fierro, who initially denied any knowledge of the crime. Once he learned that the Juarez police had abducted his parents, however, he confessed to the crime. As soon as his parents were released, Mr. Fierro recanted. He declared that he was innocent and had confessed only out of fear that his parents would face brutal torture at the hands of the notorious Juarez police if he did not cooperate. However, the confession was found admissible and the case proceeded to trial.

[2] The "Case facts" sections for each entry are derived primarily from the summaries submitted to the ICJ by Mexico and the United States, as published in the annexes to the *Avena* pleadings. The "VCCR violation" sections are taken primarily from Mexico's ICJ case summaries and the ICJ's fact-finding. This summary omits those *Avena* cases for which "review and reconsideration" has either already been provided or is no longer required because of their final resolution by other means.

Aside from the confession, no evidence corroborated the alleged eyewitness account of the crime and its aftermath. The prosecution's key witness gave contradictory and bizarre testimony, at one point accusing one of the jurors of meeting him on the night of the homicide to purchase a stolen radio. The interrogating detective admitted that he had provided Mr. Fierro with many of the factual details for his confession, such as the date and location of the crime and the disposition of the body. On 12 February 1980, Mr. Fierro was convicted of murder. He was sentenced to death on 15 February 1980.

In 1994, some fourteen years after the trial, Mr. Fierro obtained an evidentiary hearing on his coercion claim. With the assistance of Mexican consular authorities, he presented voluminous new evidence that included a statement from the Juarez police chief who had detained his parents. The reviewing court found that the El Paso detective had committed perjury at the pre-trial suppression hearing: he was aware that Mr. Fierro's parents had been taken into custody by the Juarez police with the intent of holding them in order to coerce a confession from him. The judge ruled that Mr. Fierro should receive a new trial.

The Texas Court of Criminal Appeals unanimously adopted these findings of fact, also agreeing that Mr. Fierro's "due process rights were violated" [3] by the perjured testimony. However, in a controversial 5-4 opinion, the Court nonetheless held that the violation constituted "harmless error" and refused to order a new trial, on the grounds that Mr. Fierro would have been convicted even without his confession.[4] This conclusion flew in the face of the statement of the trial prosecutor, who declared under oath that:

> Had I known at the time of Fierro's suppression hearing what I have since learned about the family's arrest, I would have joined in a motion to suppress the confession. Had the confession been suppressed, I would have moved to dismiss the case unless I could have corroborated [the eye witness] testimony. My experience as a prosecutor indicates that the judge would have granted the motion as a matter of course.[5]

The federal courts have consistently adopted the same findings of fact that led to the call for a new trial, but have held that Mr. Fierro is procedurally barred from obtaining relief.

VCCR violation: The police were aware from the outset that Mr. Fierro was a Mexican national but never informed him of his right to consular notification and contact. Consular officials have provided affidavits asserting that they would have immediately secured the release of his parents from unlawful custody, had they been informed of the arrest. Mexico has submitted a series of *amicus curiae* briefs in support of Mr. Fierro and has also filed diplomatic protests with the U.S. Department of State regarding the uncontested violation of Article 36 obligations.

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[3] *Ex Parte Fierro*, 934 S.W.2d, 370, 372 (Tex. Crim. App. 1996).
[4] *Id.* at 376.
[5] *Id.* at 387.

***Avena* determination**: violations of all VCCR Article 36(1) rights and obligations, plus the Article 36(2) requirement to give "full effect" to the rights conferred under the treaty.

Procedural status: Due to the application of state procedural default rules, the merits of Mr. Fierro's Vienna Convention claims have never been addressed by any court. Counsel submitted a successor petition to the Texas Court of Criminal Appeals based on *Avena* and the President's implementing memorandum, which was dismissed on 7 March 2007. On 31 March 2008, the U.S. Supreme Court denied his petition for certiorari asserting his entitlement to "review and reconsideration" under *Avena*. As Mr. Fierro has now exhausted both his primary and his successive appeals, the State of Texas may seek to schedule his execution at any time.

Carlos Avena Guillen

Case facts: On 15 September 1980, law enforcement authorities of Los Angeles County, California arrested Carlos Avena Guillen, a nineteen-year-old Mexican national. Mr. Avena was a suspect in a series of random shootings in Los Angeles three days earlier in which two people had died. After Mr. Avena confessed to the crime, the authorities charged him with two counts of first-degree murder and a felony charge of auto theft.

Despite his limited command of English, Mr. Avena was interrogated solely in that language and eventually confessed to the crime. His confession was surreptitiously recorded, but nowhere on the recording did the police advise him of his legal rights, nor did they obtain his written consent to waive those rights. Furthermore, it is clear from the transcript of the recording that Mr. Avena attempted to terminate the interview, to no avail.[6]

Unable to afford an attorney, Mr. Avena was provided with court-appointed counsel on 7 January 1981. Over the next eleven months, the appointed attorney spent a total of just 53 hours preparing for his client's capital murder trial.[7] The attorney met with his client four times, conducted no pre-trial investigation, presented no motions, retained no expert witnesses and failed even to interview Mr. Avena's closest relatives. Despite knowing that Mr. Avena had given a recorded confession, the attorney made no effort to have the statement suppressed before trial and reportedly failed to discuss its contents or circumstances with his client.

During his brief closing argument, the attorney abandoned his client entirely. He conceded the

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[6] A professional transcription of the recording reveals that, prior to confessing, Mr. Avena asserted that he no longer wished to talk to his interrogators, telling them: "Don't want to talk about it" and then repeating his wish to end the interview, saying "Forget about it, man. I don't want to talk ... It's over." *See In re Avena*, 12 Cal.4th 694, 751 (Cal. 1996) (Mosk, J., dissenting).

[7] For comparison, one in-depth examination of federal capital trials from 1990 to 1997 conducted on behalf of the Judicial Conference of the United States found that the total attorney time per representation in capital cases that actually proceeded to trial averaged 1,889 hours. Most of that time would consist of pre-trial preparation. *See* Subcommittee on Federal Death Penalty Cases Committee on Defender Services, Judicial Conference of the United States, *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation,* at 14 (1998), *available at* http://www.uscourts.gov/dpenalty/1COVER.htm

weight of the prosecution's evidence of the murders in the form of the taped confession. Mr. Avena was promptly convicted of both murders, and the case proceeded to the penalty phase. Mr. Avena's attorney called no mitigation witnesses. His closing statement to the jury urged them to feel "no sympathy" for his client. Not surprisingly, on 12 February 1982, Mr. Avena was sentenced to death. As a California Supreme Court judge later observed in his dissenting opinion to the denial of habeas relief,

> Having stripped his client of all vestiges of his humanity in the eyes of the jurors, having deprived him of any chance of stirring their compassion or deserving their mercy, [defense counsel] was then reduced to arguing that the jury should spare petitioner simply because some murderers are even worse. . . on this record [Avena] would probably have had a better chance of receiving a sentence of life imprisonment without possibility of parole if his counsel had made no argument at all.[8]

VCCR violation: Mr. Avena was registered with the Immigration and Naturalization Service, a fact that would have become apparent during routine verification of his identity by the police. Nonetheless, at no time was Mr. Avena informed of his rights under Article 36. On 14 February 1992, the Consulate of Mexico in San Francisco received a letter from the warden of the California State Prison in San Quentin, indicating that Mr. Avena was incarcerated and that prison records indicated he was a Mexican national. The letter arrived almost exactly ten years after Mr. Avena was incarcerated on death row.

Had Mexico learned of his case without delay, the failure of Mr. Avena's appointed attorney to visit and communicate with him regularly would have been identified by the consular officer assigned to his case as a serious problem requiring immediate attention. As they have done in many other such cases, once it became apparent that appointed counsel was mishandling Mr. Avena's defense, Mexican consular officials would have either persuaded the court to discharge court-appointed counsel and provide new counsel, recruited qualified pro bono counsel, or retained competent counsel to represent him.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: habeas proceedings are ongoing in federal district court; on 4 December 2007 a supplemental motion for an evidentiary hearing was filed seeking "review and reconsideration" on the basis of *Avena*. The court denied the request on September 18, 2008, while granting a hearing on the claim that trial counsel provided ineffective assistance.

II. CASES WHERE EXECUTION DATES MAY BE IMMINENT

[8] *In re Avena*, 12 Cal.4th at 769-770 (Mosk, J., dissenting). The dissent discusses and lists sixteen ways in which Mr. Avena's trial attorney provided deficient and ineffective assistance. *Id.* pp. 772-773.

Leal García, Humberto

Case facts: On 21 May 1994, law enforcement authorities in Bexar County, Texas arrested Humberto Leal García, aged 21, on suspicion of murder. It was alleged that Mr. Leal García had kidnapped, sexually assaulted and murdered a woman on the day of his arrest.

At the time of his arrest, Mr. Leal García had no criminal record (apart from traffic tickets), was indigent, and suffered from learning disabilities. One of his appointed lawyers has twice been suspended from the practice of law, and was publicly reprimanded for failing to carry out his obligations to clients. On 10 July 1995, Mr. Leal García was convicted of capital murder. The penalty phase hearing was convened on 11 July 1995. Counsel did not retain a defense expert to testify about Mr. Leal Garcia's mental impairments, and presented little mitigating evidence at the penalty phase of his trial. Later that same day, the jury returned with its verdict, and Mr. Leal was immediately sentenced to death by the trial court.

VCCR violation: At a pretrial hearing on a motion to reduce bond, prosecutors commented that Mr. Leal was a Mexican national. Nevertheless, at no time during his pretrial detention and subsequent capital murder trial did Texas police or prosecutors inform Mr. Leal of his rights under Article 36. Mexican consular officials learned of the case nearly two years after the trial concluded, when they received a letter from Mr. Leal García from death row on 7 March 1997.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: Counsel submitted a successor petition to the Texas Court of Criminal Appeals based on *Avena* and the President's implementing memorandum, which was dismissed on 7 March 2007. On 31 March 2008, the U.S. Supreme Court denied his petition for certiorari asserting his entitlement to "review and reconsideration" under *Avena*. As he has now exhausted both his primary and his successive appeals, the State of Texas may seek to schedule his execution at any time.

Moreno Ramos, Roberto

Case facts: On 30 March 1992, police arrested Mr. Moreno after questioning him regarding the disappearance of his wife and two children. On April 7, 1992, he was charged with their murders.

On 18 March 1993, Mr. Moreno was convicted of murder. The defense waived its opening argument at the penalty phase, and failed to present any mitigating evidence whatsoever. Defense counsel's closing argument filled only six pages of the trial transcript, lasted less than ten minutes, and did not ask the jury to return a life sentence. On 23 March 1993, the trial court sentenced Mr. Moreno to death.

VCCR violation: The authorities were aware that Mr. Moreno was a Mexican national and

police traveled to Mexico during their investigation of the case. Nevertheless, he was never informed of his rights to consular notification and access. Mexican consular officials learned of Mr. Moreno's detention through the media in February 1993, approximately 11 months after his arrest, by which time the trial was already underway.

***Avena* determination:** violations of all Article 36(1) rights and obligations, plus the "full effect" requirements of Article 36(2).

Procedural status: Counsel submitted a successor petition to the Texas Court of Criminal Appeals based on *Avena* and the President's implementing memorandum, which was dismissed on 7 March 2007. On 31 March 2008, the U.S. Supreme Court denied his petition for certiorari asserting his entitlement to "review and reconsideration" under *Avena*. As Mr. Moreno has exhausted his appeals, the State of Texas may schedule his execution at any time.

Ramírez Cardenas, Rubén

Case facts: On 23 February 1997, law enforcement authorities in Hidalgo County, Texas arrested Rubén Ramírez Cardenas, aged 26, on suspicion of murder. The authorities alleged that Mr. Ramírez had abducted, assaulted and killed a female cousin.

Mr. Ramírez Cárdenas was questioned by the police over a period of several days. At trial, the prosecution relied heavily on his statements made in the absence of consular notification or assistance. The jury deliberated a little over an hour and a half before convicting Mr. Ramírez of capital murder on 17 February 1998. The next day, on 18 February 1998, Mr. Ramírez was sentenced to death.

VCCR violation: At the time of his arrest, he was carrying identification issued by the INS establishing his status as a resident alien. In July 1997, Mexican consular authorities learned of Mr. Ramírez's detention, not through notification by the local authorities but rather through media reports of the case. Mexico has provided extensive services to Mr. Ramírez during post-conviction proceedings, for example, by intervening before the federal district court to ensure the appointment of qualified counsel when it became apparent that the statute of limitations was about to expire for the presentation of a federal habeas petition.

Avena determination: violations of all Article 36(1) (a) and (b) requirements

Procedural status: Counsel submitted a successor petition to the Texas Court of Criminal Appeals based on *Avena* and the President's implementing memorandum, which was dismissed on 7 March 2007. On 31 March 2008, the U.S. Supreme Court denied his petition for certiorari asserting his entitlement to "review and reconsideration" under *Avena*. Because he has now exhausted his primary appeals, Texas authorities could seek an execution date at any time.

Ignacio Gómez

Case facts: On 25 November 1996, law enforcement authorities in the state of Texas arrested Ignacio Gómez, aged 26, on suspicion of murder. The authorities alleged that he had killed three young men who were involved in a dispute with Mr. Gómez's brother.

At the time, Mr. Gómez spoke broken English and had only an 8th grade education. Moreover, he suffered from a severe mental illness, attributable in part to a brain injury he had suffered at the age of three. Although he could read English at only a third-grade level, he signed a confession that was typed in English, replete with legal terminology and other advanced vocabulary.

Mr. Gómez was convicted of capital murder on 11 June 1998. At the penalty phase, the prosecution established that Mr. Gomez had several convictions for driving while intoxicated; he had no other criminal convictions. On 16 June 1998, he was sentenced to death.

VCCR violation: At the time of his arrest, Mr. Gómez was carrying his resident alien card, which indicated he was a national of Mexico. The arresting officer admitted he saw this card, but did not inform Mr. Gomez of his rights to consular notification and access. Several months after his initial arrest, Mexican consular authorities learned of Mr. Gómez's detention through his mother. The trial court denied a pre-trial motion to suppress his statement based on the VCCR violation, without comment.

***Avena* determination:** violations of Article 36(1)(a) and (b) obligations, plus the 36(1)(c) right of consular visitation.

Procedural status: Counsel submitted a successor petition to the Texas Court of Criminal Appeals based on *Avena* and the President's implementing memorandum, which was dismissed on 7 March 2007. On 31 March 2008, the U.S. Supreme Court denied his petition for certiorari asserting his entitlement to "review and reconsideration" under *Avena*. On 27 May 2008, a panel of the U.S. Fifth Circuit Court of Appeals denied review of his federal habeas corpus petition. The U.S. Supreme Court denied his petition for certiorari on December 1, 2008. Mr. Gómez is profoundly mentally ill, and is currently housed in the mental health unit of the prison.

III. OTHER DEATH ROW CASES

Maldonado, Virgilio

Case facts: On 11 April 1996 law enforcement authorities of Harris County, Texas arrested Mr. Maldonado, aged 30, on suspicion of murder. The police alleged that Mr. Maldonado and a co-defendant had committed a robbery of an apartment in Houston, Texas, during which the victim was fatally shot.

Mr. Maldonado is alleged to be mentally retarded and completed less than one year of school in Mexico. At trial, prosecutors relied heavily on his confession to obtain a conviction; there was virtually no other evidence tying him to the crime. On 1 October 1997, Mr. Maldonado was

convicted of murder. The defense presentation of mitigating evidence at the penalty phase hearing was minimal; trial counsel failed to investigate and present readily available evidence that Mr. Maldonado suffers from mental retardation. There is no evidence to indicate trial counsel investigated Mr. Maldonado's life in Mexico, where he lived until he was 21 years old. On 6 October 1997, the trial court sentenced him to death.

VCCR violation: Although Mr. Maldonado was interrogated in Spanish and told the interrogating officer that he went to school in Mexico, the authorities at no time informed him of his rights under Article 36. Mexican consular officials learned of Mr. Maldonado's detention from the media in August 1997, nearly one year after his arrest and after the trial had already begun. At trial and on direct appeal, Mr. Maldonado's counsel argued the jury should have been informed that the authorities had violated his rights under Article 36. The Texas Court of Criminal Appeals affirmed his conviction and death sentence, holding that because no trial evidence was introduced to show that Mr. Maldonado was a Mexican national, he was not entitled to a jury instruction on the Vienna Convention violation.[9]

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: on March 31, 2008, the U.S. Supreme Court denied his petition for certiorari asserting his entitlement to "review and reconsideration" under *Avena*. Review of other habeas claims is ongoing in federal district court. On August 29, 2008, counsel filed an amended federal habeas petition and a motion to stay the proceedings pending Congressional action to implement the *Avena* decision.

Rocha Diaz, Felix

Case facts: On 24 April 1996, law enforcement authorities in the State of Texas charged Félix Rocha Díaz with the murder of a security guard. At a pre-trial hearing, defense counsel argued that Mr. Rocha's statements to the police should be suppressed as a remedy for the violation of the Vienna Convention. The prosecution repeatedly objected to all questions regarding Article 36 as "irrelevant." The court sustained the objections, and denied the motion to suppress. Based largely on his custodial statement, Mr. Rocha was convicted of capital murder on 12 November 1998. On 19 November 1998, he was sentenced to death.

VCCR violation: Although the police later admitted that they knew Mr. Rocha was a Mexican national at the time of his detention, they at no time informed him of his right to seek consular assistance. More than sixteen months after Mr. Rocha's arrest, on 21 August 1997, Mexican consular authorities finally learned of his detention. Upon learning of his situation, Mexican consular officers visited Mr. Rocha, met with his lawyers, informed them of the article 36 violation, and began to assist in his defense.

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[9] *Maldonado v. State*, 998 S.W.2d 239, 247 (Tex. Crim. App. 1999).

On appeal, Mr. Rocha argued that his confession and other evidence should have been suppressed based on the authorities' violation of article 36 of the Vienna Convention. The Texas Court of Criminal Appeals acknowledged that Mr. Rocha was a Mexican national, and that he was not informed of his article 36 rights.[10] Nevertheless, the court held that article 36 was not a "law" that required the suppression of evidence. Interpreting the Supremacy Clause of the United States Constitution, the Court of Criminal Appeals noted: "That a treaty is equal to a law does not mean that a treaty is the same as a law."[11]

***Avena* determination:** violations of Article 36(1)(a) and (b) requirements.

Procedural status: Counsel submitted a successor petition to the Texas Court of Criminal Appeals based on *Avena* and the President's implementing memorandum, which was dismissed on 7 March 2007. On 31 March 2008, the U.S. Supreme Court denied his petition for certiorari asserting his entitlement to "review and reconsideration" under *Avena*. Review is pending in the Fifth Circuit on appeal from the denial of his federal habeas petition.

Ibarra, Ramiro Rubí

Case facts: On 6 March 1987, Texas police officers arrested Mr. Ibarra, aged 32, in connection with the murder and sexual assault of a woman in Waco, Texas. The authorities subsequently indicted him on capital murder charges. Mr. Ibarra remained in detention for the next sixteen months. On 29 July 1988, after the trial court suppressed evidence the prosecution had obtained through an illegal search warrant, charges against Mr. Ibarra were dismissed. Pursuant to changes in state law, prosecutors were able to obtain new evidence against Mr. Ibarra in 1996. On 18 September 1996, he was re-indicted for capital murder.

On 17 September 1997, Mr. Ibarra was convicted of murder. After hearing the guilty verdict, Mr. Ibarra slashed his carotid artery, and jail records indicated that he had "an altered mental status, secondary to emotional upheaval." Nevertheless, the penalty phase of the trial continued. The defense presented very little evidence to support a life sentence, failing to elicit any testimony regarding Mr. Ibarra's life in Mexico, where he lived until he was 18 years old. Defense counsel also presented no mental health evidence. On 22 September 1997, Mr. Ibarra was sentenced to death.

VCCR violation: Although the police later admitted they knew Mr. Ibarra was a Mexican national, they never informed him of his article 36 rights. The day Mr. Ibarra was sentenced to death, a Mexican reporter contacted the consulate of Mexico in Austin, Texas. With the assistance of Mexican consular officials, the defense attorney filed a motion for a new trial based on the violation of Article 36. The police freely admitted they knew Mr. Ibarra was a Mexican national, but were not aware that he had the right to consult with the Mexican consulate. The prosecution characterized the defense argument as "ludicrous." The court denied the motion without comment. On appeal, the Texas Court of Criminal Appeals refused to reach the merits

[10] *Rocha v. State*, 16 S.W.3d 1, 26 (Tex. Crim. App. 2000).

[11] *Id.* at 35 n.12.

of the Vienna Convention violation, holding that Mr. Ibarra had failed to timely raise the issue at the trial court level and had thereby failed to preserve the issue for appeal.[12]

Mr. Ibarra has received shockingly substandard legal representation throughout his post-conviction appeals. The lawyer who represented him in state habeas proceedings filed a five-page appeal on his behalf, raising one legal argument that had already been raised and rejected on direct appeal. His lawyer never visited him or responded to Mr. Ibarra's letters. When Mexico discovered that the lawyer had virtually abandoned Mr. Ibarra, the consulate intervened and requested that the federal district court appoint new, qualified counsel. Mexico retained counsel to prepare Mr. Ibarra's federal petition for writ of habeas corpus, while awaiting the appointment of local counsel. Mexican consular representatives also met with legal counsel for Texas Governor Richard Perry to express their concern over Mr. Ibarra's case.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: Counsel submitted a successor petition to the Texas Court of Criminal Appeals based on *Avena* and the President's implementing memorandum, which was dismissed on 26 September 2007. On 19 May 2008, the U.S. Supreme Court denied his petition for a writ of certiorari asserting his entitlement to "review and reconsideration" under *Avena*. Review of the habeas corpus petition is ongoing in federal district court.

Tamayo, Edgar Arias

Case facts: On 31 January 1994, law enforcement authorities in Harris County, Texas arrested Mr. Tamayo on suspicion of murder, alleging that he had shot and killed a police officer who had arrested him on charges of robbery.

On 27 October 1994, Mr. Tamayo was convicted of murder, after jury deliberations lasting just over half an hour. Although a defense investigator had discovered before the trial that Mr. Tamayo had previously suffered a serious head injury resulting in brain damage, trial counsel failed to retain and present expert witnesses at the penalty phase of trial to establish his client's diminished mental capacity. Following an abbreviated penalty phase hearing, the trial court sentenced Mr. Tamayo to death on 31 October 1994.

VCCR violation: At the time of his arrest, he told the police that he had attended school in Mexico, and could only speak some English. Mexican consular officials eventually learned of Mr. Tamayo's detention in late September 1994 – less than one week before his capital murder trial commenced – when Mr. Tamayo himself wrote to the consulate. The extent of Mexico's subsequent assistance illustrates the profound significance of the denial of timely consular involvement in this case. A comprehensive mental health evaluation, carried out during post-conviction proceedings, has established that Mr. Tamayo suffers from two recognized mental disorders stemming from his head injury, both of which affect his ability to control impulses and to regulate aggressive behavior. Because the Texas court refused to provide funds to document

[12] *Ibarra v. State*, 11 S.W.2d 189, 197 (Tex. Crim. App. 1999).

the extent of his brain injury, the Mexican Consulate in Houston made funds available for neuropsychological testing.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: Counsel submitted a successor petition to the Texas Court of Criminal Appeals based on *Avena* and the President's implementing memorandum, which was denied on July 2, 2008. Mr. Tamayo's habeas corpus petition is currently under review in federal district court.

García Torres, Hector

Case facts: On 5 September 1989, law enforcement authorities in Hidalgo County, Texas arrested Hector García Torres, aged 28, on suspicion of murder. The authorities alleged that during the course of robbing a store, Mr. Garcia had shot two people, fatally wounding one of them.

At trial, the prosecution based its case largely on the eyewitness testimony of the surviving victim of the robbery, who had initially failed to identify Mr. García as the assailant but later provided the identification after viewing a second array of photographs. No physical evidence was presented to link Mr. García to the crime. Defense attorneys called just one witness during the guilt phase of the trial.

On 24 August 1990, Mr. García was convicted of murder. During the penalty phase hearing the following day, Mr. Garcia's attorney called only two mitigating witnesses who provided exceptionally brief testimony. During its closing argument, the prosecution emphasized Mr. García's status as an undocumented alien as one of the justifications for the imposition of a death sentence. Defense counsel failed to object to the prosecution's irrelevant and inflammatory references to immigration status. Later that same day, the jury returned a death verdict and the trial court sentenced him to death.

VCCR violation: At the time of his arrest, Mr. García spoke only Spanish and an agent of the Immigration and Naturalization Service interviewed Mr. García at the county jail three days after his arrest. Nevertheless, the authorities at no time informed Mr. García of his consular rights. On 3 July 1991, after requesting information from the death row warden regarding all Mexican nationals who were awaiting execution, Mexican consular officials finally learned of Mr. García's case.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: Mr. García Torres filed a petition for state habeas corpus relief on Aug. 28, 1997, arguing that the VCCR violation in his case entitled him to relief. The court has not yet issued a decision. Post-conviction counsel are preparing a supplemental petition based on *Avena*.

Alvarez, Juan Carlos

Case facts: On 20 June 1998, law enforcement authorities of Harris County, Texas arrested Mr. Alvarez, aged 21, on suspicion of two gang-related murders.

Counsel for Mr. Alvarez moved to set aside the indictment and to suppress his statement to police on the grounds of the Vienna Convention violation. The trial court denied the motions. In its closing argument to the jury, the prosecution placed heavy emphasis on the importance of Mr. Alvarez's videotaped statement to the authorities. On 22 September 1999, Mr. Alvarez was convicted of murder.

During the penalty phase, the defense presented evidence that Mr. Alvarez's father had been murdered when Mr. Alvarez was only seven years old. The prosecution dismissed this evidence as irrelevant, comparing Mr. Alvarez and his family to Asian immigrants, who "are doctors, lawyers." He disparaged the defense claim that Mr. Alvarez Banda had been deeply affected by the murder of his father, claiming that "other immigrants" had experienced "a real war" and had not killed anyone. After deliberating for slightly more than one hour, the jury returned with a death verdict; on 7 October 1999, the trial court sentenced Mr. Alvarez to death.

VCCR violation: Despite his INS record and other clear indications of Mexican nationality, the authorities at no time informed him of his rights under Article 36. On 1 February 2000, Mexican consular officials discovered through their own investigation that Mr. Alvarez was on death row. Since learning of his situation, Mexican consular officials retained counsel to assist Mr. Alvarez in his post-conviction proceedings.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: On 10 September 2001, with the assistance of Mexican consular officials, Mr. Alvarez filed a habeas corpus petition in state court raising the Vienna Convention violation. Counsel also filed a supplemental petition based on *Avena* and the President's implementing memorandum. The court declined to hold an evidentiary hearing on the treaty claim, and the Court of Criminal Appeals denied relief in a short unpublished order on September 24, 2008.

Hernández Llanas, Ramiro

Case facts: On 15 October 1997, law enforcement authorities in the state of Texas arrested Ramiro Hernández Llanas, aged 28, and charged him with a murder committed during the course of a robbery and residential burglary.

The trial court denied his motion to suppress on the basis that Article 36 does not give rise to individual rights enforceable by foreign nationals and that the interrogating officer was under no obligation to take any action based on the Vienna Convention, unless so requested by Mr. Hernández. The trial commenced on 7 February 2000. The next day, the jury convicted him of murder. Two days later, on 10 February 2000, the trial court sentenced him to death, after a penalty phase hearing during which the jury heard expert testimony determining that Mr.

Hernández has mental retardation.

VCCR violation: At the time of his arrest, Mr. Hernández informed the authorities that he was a Mexican national and was interrogated in Spanish. Although aware of his Mexican nationality, the authorities failed to inform Mr. Hernández of his rights under Article 36. Mexican consular officials learned of Mr. Hernández Llanas' detention on 17 October 1997, without the assistance of the arresting authorities.

***Avena* determination:** violation of the Article 36(1)(b) requirement to be informed of his consular rights without delay.

Procedural status: Mr. Hernández's habeas corpus petition was filed in state court on May 2, 2002 and included a claim based on the Article 36 violation. He augmented his petition with an *Avena* claim; on September 10, 2008, the Texas Court of Criminal Appeals denied habeas relief.

Pérez Gutiérrez, Carlos René

Case facts: On 17 June 1994, law enforcement authorities in the state of Nevada arrested Carlos René Pérez Gutiérrez, aged 26, on suspicion of the murder of his stepdaughter.

Mr. Perez had completed only six years of school in Mexico and had no prior criminal record. On the advice of his court-appointed attorneys, he pleaded guilty to the charge and waived his right to a jury trial, without obtaining any meaningful benefit in return for his plea. He was formally convicted on 21 April 1995. During the penalty phase hearing before a panel of three judges, the prosecution presented the testimony of Mr. Pérez's wife, who was herself initially charged with the murder of her daughter and who then agreed to testify against her husband in exchange for leniency. The official court interpreter, who was retained by the prosecution and who translated the aggravating testimony of the Spanish-speaking witnesses, was later convicted of perjury for fabricating his credentials at Mr. Pérez's sentencing hearing. The record contains many examples of defense objections to confusing, misleading or completely inaccurate translations. On 10 August 1995, the judges sentenced Mr. Pérez to death.

VCCR violation: Although prosecutors obtained Mr. Pérez's immigration records listing his Mexican nationality and legal resident status prior to trial, the authorities at no time informed him of his consular rights. On 29 February 1996, Mr. Perez Gutierrez's family contacted Mexican consular officials and informed them that Mr. Pérez had been sentenced to death and was awaiting execution. State habeas counsel was apprised of the consular rights violation in time to raise it in state habeas proceedings but failed to raise the claim.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: On 29 October 2002, with the assistance of Mexican consular officials, Mr. Pérez Gutiérrez raised the VCCR violation for the first time in his federal habeas corpus petition; the petition was stayed on 30 June 2003 pending exhaustion of the claim in state court. On 9 June 2004, he filed a habeas petition in state court based on *Avena*. The state court has not yet

ruled on his petition.

Loza, Jose Trinidad

Case facts: Jose Trinidad Loza, aged 18, was arrested in Ohio on 16 January 1991 and charged with the murder of his girlfriend's mother, as well as three of his girlfriend's siblings.

Defense counsel challenged the admissibility of Mr. Loza's confession, asserting that it was involuntary because of psychological coercion, trickery, and deception by the police. Based largely on his confession, a jury convicted Mr. Loza of four counts of murder on 31 October 1991. On 6 November 1991, the trial court sentenced him to death.

VCCR violation: Mexican consular officers learned of Mr. Loza's detention only when his post-conviction attorney sought their assistance in November 1995. By that time, Mr. Loza had been sentenced to death, his conviction and death sentence had been affirmed, and his request for review by the United States Supreme Court had been denied. Trial counsel did not know that Mr. Loza had a right to consular notification, nor did he consider contacting Mexico for assistance because he had never represented a Mexican client. Among other issues related to the fairness of the trial, Mexican consular officials would have assisted counsel in investigating Mr. Loza's cultural background and upbringing in Mexico. This information would have been relevant not only to the penalty phase of his capital murder trial but also to the voluntariness of his confession.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: habeas proceedings are ongoing in federal district court, including claims based on the Article 36 violations. A request for judicial notice of *Avena* was filed with the reviewing court on 16 April 2004.

Horacio Alberto Reyes Camarena

Case facts: On 18 September 1995, law enforcement authorities in the State of Oregon arrested Horacio Alberto Reyes Camarena, aged 40, on suspicion of murder. He was subsequently charged with killing a woman whom he knew from working on a local farm.

On 25 October 1996, Mr. Reyes Camarena was convicted of murder, and the trial court sentenced him to death on 15 January 1997. Mr. Reyes appealed his conviction and death sentence on the grounds that authorities failed to notify him of his rights to consular notification and access. The Oregon Supreme Court rejected the assertion of this and other claims based on the municipal law doctrine of "procedural default." Applying this doctrine, the court decided that, because Mr. Reyes had not asserted his rights under the Vienna Convention in his previous legal proceedings, he could not assert them in the state habeas proceeding.[13]

[13] *State v. Reyes-Camarena*, 7 P.3d 522, 524-26 (Or. 2000).

VCCR violation: Although the police were aware of his Mexican nationality, the authorities at no time informed Mr. Reyes of his consular rights, nor did the authorities ever advise Mexican consular officers of Mr. Reyes's detention prior to his capital murder trial. In February 1996, Mexican consular authorities learned of Mr. Reyes's detention from a defense investigator, but by then Mr. Reyes had already given incriminating statements to the police.

***Avena* determination:** violations of all Article 36(1)(a) and (b) provisions.

Procedural status: State habeas proceedings are ongoing; *Avena* was raised in a supplemental petition.

Fuentes Martínez, Omar

Case facts: On 5 November 1988, law enforcement authorities of Riverside, California arrested Mr. Fuentes, aged 29, on suspicion of murder. In brief, the state alleged that on 4 November 1998, Mr. Fuentes killed a man in connection with a dispute over money. At trial, a co-defendant testified that Mr. Fuentes had drunk over 24 cans of beer, and had ingested cocaine and methamphetamine, before the confrontation with the victim.

Mr. Fuentes, who has only a sixth-grade education, spoke little English at the time of his arrest. His lawyer did not speak Spanish. Mr. Fuentes's case proceeded to trial in November 1992. On 9 November, when jury selection was already underway, Mr. Fuentes informed the court that he would like a continuance of his trial in order to speak to a Mexican consular representative. Mr. Fuentes had recently learned through an acquaintance that the consulate could assist him in his defense, and Mr. Fuentes's wife had visited the consulate at her husband's request. Mr. Fuentes's lawyer expressed great skepticism to the trial judge that the consulate could provide any assistance – even though the attorney had never spoken to anyone from the consulate.

The judge denied the request for continuance, commenting that Mr. Fuentes would be free to contact the consulate, but faulting him for not making the request earlier – even though Mr. Fuentes was wholly unaware of his Article 36 rights until that time, due to the authorities' continued failure to advise him of those rights. Mr. Fuentes's defense lawyer, despite his client's explicit request, failed to contact consular officials. On 3 December 1992, Mr. Fuentes was convicted of murder, and on 14 January 1992, the jury recommended a death sentence. On 10 May 1993, the trial court sentenced Mr. Fuentes to death.

VCCR violation: At no time during his pre-trial detention did the authorities inform him of his Article 36 rights, even though the police knew from the time of his initial arrest that he was born in Michoacan, Mexico. Consular officials were unaware of the detention until 3 November 1992, when they were informed of his ongoing trial by his wife.

Had the authorities complied with their Article 36 obligations there is much the consulate could have done to affect the outcome of his trial. For example, during trial, the defense was unable to locate a critical witness whose testimony would have contradicted the prosecution's theory of the

crime. After Mr. Fuentes's conviction, new counsel working with the consulate was able to locate the witness in Mexico, and interviewed him with Mexico's assistance. The consulate also located another critical witness, Mr. Fuentes's brother, by arranging a radio broadcast in Nuevo Laredo, Mexico, where the witness was living.

***Avena* determination:** violations of all 36(1) rights and obligations.

Procedural status: federal habeas proceedings have been stayed by the district court, pending the disposition of a successive state habeas petition based on *Avena* that was filed with the California Supreme Court on 24 February 2006. On January 26, 2009, the Court advised counsel that the case would soon be set for oral argument, perhaps as early as the March 2009 calendar.

Ayala, Hector Juan

Case facts: On 5 June 1985, law enforcement authorities of San Diego County, California arrested Mr. Ayala, aged 32, on suspicion of murder. On 20 June, he was charged with robbery, attempted robbery and three counts of murder. It was alleged that the crimes occurred when Mr. Ayala and two other men attempted to rob an automobile repair shop.

On 1 August 1989, the jury convicted Mr. Ayala of murder. The penalty phase began on 14 August; Mr. Ayala's trial counsel called his parents and sisters to testify on his behalf and presented other testimony to establish that Mr. Ayala was under the dominating influence of his older brother. On 31 August, the jury returned a verdict of death.

VCCR violation: Mexican consular officials did not learn of Mr. Ayala's case until 19 February 1992, by which time Mr. Ayala had already been sentenced to death and the case was under automatic appeal. With the extensive support of Mexican consular officers, Mr. Ayala raised the violations of Article 36 for the first time in state habeas corpus proceedings; the claim was denied by the state court in a two-sentence decision.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: habeas proceedings are ongoing in federal district court; a successor state habeas petition is also before the California Supreme Court based on *Avena* (filed on 28 December 2007).

Ochoa Tamayo, Sergio

Case facts: On 21 January 1990, law enforcement authorities of Los Angeles County, California arrested Mr. Ochoa, aged 21, on charges of attempted robbery and murder. Mr. Ochoa was eventually charged in connection with two murders, both allegedly gang-related.

No physical evidence linked Mr. Ochoa to either crime. The prosecution relied on the testimony of other gang members to link Mr. Ochoa to both incidents, as well as the testimony of a witness

to the second murder. Two alleged participants gave statements implicating Mr. Ochoa and both testified at his trial, in exchange for reduced sentences. The jury convicted Mr. Ochoa on 31 August 1992. Following a brief penalty phase hearing, the jury recommended a death sentence. Mr. Ochoa was formally sentenced to death on 10 December 1992.

VCCR violation: Mr. Ochoa's booking form indicate that he was born in Mexico, but authorities never informed him of his rights to consular notification and access. On 8 October 1992, after the sentencing hearing had concluded, Mexico finally learned of Mr. Ochoa's case. Neuropsychological testing conducted since his incarceration indicates that Mr. Ochoa suffers from significant mental impairments, including borderline mental retardation. This persuasive mitigating evidence was not developed by trial counsel and thus was not presented to the sentencing jury.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: in federal habeas proceedings, the district court issued a stay to permit exhaustion of the VCCR claim in state habeas proceedings. A successive state habeas petition raising a supplemental *Avena* claim (filed 4 May 2005) is pending before the California Supreme Court.

Tafoya Arriola, Ignacio

Case facts: On 26 July 1993, law enforcement authorities of Orange County, California arrested Mr. Tafoya, aged 33, and charged him with robbery and two murders. The charges arose from an incident in which two men were seen entering and then leaving the home of a local drug dealer, who was fatally shot along with another person.

The key prosecution testimony came from the co-defendant, who alleged that there had been no plan to rob or kill the victims and that Mr. Tafoya had shot both men. Although a number of witnesses testified that they saw both men enter the house and that a dispute ensued, no one else witnessed the crime. Mr. Tafoya testified that he shot the two men in self-defense, during a struggle in which they violently assaulted him. On 8 February 1995, Mr. Tafoya was convicted of murder. Mitigating evidence presented during the penalty phase consisted solely of character testimony from five witnesses. On 6 June 1995, the trial court sentenced him to death.

VCCR violation: Mr. Tafoya's place of birth is listed on the police booking sheet and in 1974 he was granted a visa when his mother brought him and her other children to the United States; he was never advised of his Article 36 rights. Mexican consular officials did not learn of Mr. Tafoya's case until February 2001, nearly six years after his trial concluded. Timely consular intervention would have led to a thorough mitigation investigation of Mr. Tafoya's early childhood in Mexico. In addition, the consulate would have assisted trial counsel in obtaining psychological and other expert testimony.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: the VCCR violation was raised and briefed in state habeas proceedings; his reply brief (filed 28 January 2005) included an *Avena* claim. Relief was denied on all claims on January 28, 2009, except for the assertion of mental retardation under *Atkins*, for which the California Supreme Court has ordered the prosecution to show cause why relief should not be granted.

Benavides Figueroa, Vicente

Case facts: On 18 November 1991, law enforcement authorities of Kern County, California arrested Mr. Benavides, aged 42, and charged him with sexual assault and murder. The police alleged that Mr. Benavides had assaulted and killed the daughter of his girlfriend.

On 20 April 1993, Mr. Benavides was convicted of first-degree murder. The penalty phase commenced on 22 April 1993, with the entire proceedings lasting less than 3 hours. Only two mitigation witnesses were presented: a lifelong friend and a former employer. The defense presented no expert testimony or evidence regarding Mr. Benavides' mental competence. After a brief deliberation, the jury returned a death verdict on the same day. On 11 June 1993, the trial court sentenced Mr. Benavides to death

VCCR violation: Although he was carrying an INS immigration card at the time of his arrest and spoke only Spanish, the authorities at no time informed Mr. Benavides of his right to contact his consulate. Mexico first learned of the case 11 months after his arrest, after Mr. Benavides himself sent a letter to the Mexican consulate insisting on his innocence, requesting consular assistance and providing the names of his appointed attorneys. However, despite repeated efforts by consular officials, defense attorneys did not respond to consular enquiries until May of 1993, by which time Mr. Benavides had already been convicted. After finally securing a response from the defense, the consulate immediately sent a letter to the trial judge which raised the Vienna Convention violation. Trial counsel first raised the violation of Mr. Benavides' consular rights in a motion for a new trial following his conviction and sentencing. The trial court denied the motion on the ground that it had been raised too late in the proceedings.

Mr. Benavides has recently presented a petition for a writ of habeas corpus in state court, in which he has raised the violation of his Article 36 rights. The petition also asserts that, based on readily available information about his developmental history that should have been investigated and presented by defense counsel at the time of trial, Mr. Benavides has long displayed marked symptoms of mental retardation. Psychological testing conducted since his trial has confirmed that he functions in the mentally retarded range. As a consequence, he did not understand the trial proceeding and was unable to assist in his own defense.

***Avena* determination:** violations of Article 36(1) (a) and (b) requirements.

Procedural status: in state habeas proceedings; the petition includes a supplemental claim based on *Avena* (filed 30 November 2004).

Valdez Reyes, Alfredo

Case facts: On 1 May 1989, law enforcement authorities of Los Angeles County, California arrested Mr. Valdez, aged 26. Initially arrested for possession of a controlled substance, Mr. Valdez was subsequently charged with attempted robbery and murder.

The evidence linking Mr. Valdez to the crime consisted of a single fingerprint made in blood consistent only with the victim's blood type, on a gun merely consistent with the type of weapon allegedly used. The prosecution presented conflicting witness testimony to establish that Mr. Valdez had encountered the victim prior to the shooting, but presented no witnesses to the crime itself. So tenuous was the case against him that the prosecutor remarked that "If we didn't have the fingerprint—the print in the wet blood, I don't think we'd have a case. It would be a very, very difficult case for the people to prove." The jury found Mr. Valdez guilty of first-degree murder on 20 March 1992.

Although the defense presented little mitigating evidence during the penalty phase, the jury deliberated for two days before endorsing a death sentence. On 22 May 1992, Mr. Valdez was formally sentenced to death.

VCCR violation: Although it is clear from the trial record that the police were aware of his nationality at the time of his arrest, the authorities at no time informed Mr. Valdez of his Article 36 rights. Mexican consular officials did not learn about the case until November 1992, by which time Mr. Valdez had already been sentenced to death. Consular assistance would have aided trial counsel in the development of mitigating evidence available only in Mexico; this evidence could have been pivotal, given the lingering doubt over the defendant's actual guilt and the reluctance of the jury to impose a death sentence.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: the case is fully briefed in state habeas proceedings and includes a claim based on *Avena* (filed 25 April 2005); an evidentiary review is under way to determine if trial counsel provided ineffective assistance, e.g., by failing to introduce evidence pointing to another suspect as the actual culprit.

Martínez Sánchez, Miguel Ángel

Case facts: On 3 December 1997, law enforcement authorities of Los Angeles, California arrested Mr. Martinez, age 24. The police maintained that Mr. Martinez and a co-defendant forcibly entered a home on 27 July 1994, killing one of the occupants during a burglary attempt.

The only physical evidence linking Mr. Martinez to the murder was a single fingerprint found on the outside of a narrow window frame at the victim's home. The other significant evidence against him was a tape-recorded interview conducted by the police with Mr. Martinez's wife

following a domestic assault incident, in which she alleged that he had made self-incriminating statements about the murder.

On 28 September 1998, the jury convicted Mr. Martinez of first-degree murder and the accompanying burglary charge. During the penalty phase of the trial, Mr. Martinez's wife took the stand and recanted her statement to the police, declaring that she had fabricated the allegation against her husband based on media accounts of the crime. On 8 October 1998, the jury recommended a death sentence. The trial court formally sentenced Mr. Martinez to death on 11 December 1998.

VCCR violation: Police records clearly indicated that Mr. Martinez is a Mexican national. However, the authorities at no time informed him of his right to seek consular help, nor did his court-appointed attorney contact Mexican authorities for assistance. Mexican consular officials only learned of Mr. Martinez's case on 11 July 2001, three and a half years after his trial and sentencing. Had consular officials learned of the case without delay, assistance would have been provided to ensure that the jury was apprised of all relevant mitigating information concerning Mr. Martinez, including his mental state, social history and early childhood in Mexico.

***Avena* determination:** violations of all Article 36(1) rights and obligations

Procedural status: The case is fully briefed on automatic appeal; no habeas counsel has yet been appointed.

Contreras Lopez, Jorge

Case facts: On 12 August 1995, law enforcement authorities of Tulare County, California arrested Mr. Contreras, age 20, and charged him with robbery and murder. It was alleged that Mr. Contreras and three or four others had attempted to rob a local market and killed the proprietor. At the time of his arrest, Mr. Contreras had no prior record of convictions.

On 26 September 1996, the jury returned a verdict of guilty of first degree murder. The case for mitigation presented during the penalty phase of the trial consisted solely of character testimony presented by five witnesses. No expert witnesses testified for the defense during the penalty phase, nor is there any indication from the record that trial counsel undertook a mitigation investigation in Mexico. The jury returned a death verdict on 4 October 1996. On 11 December 1996, the trial court sentenced Mr. Contreras to death.

VCCR violation: Mr. Contreras had been registered with the INS since 1989 as a permanent resident, a fact that would have emerged as a matter of course during any routine background check by the arresting police. Nonetheless, the authorities at no time informed Mr. Contreras of his rights under Article 36. Trial counsel did not raise a Vienna Convention claim and did not seek consular assistance. Mexican consular officials did not learn of the case until February 2000, nearly five years after Mr. Contreras's arrest and four years after the imposition of the death sentence.

***Avena* determination**: violations of all Article 36(1) rights and obligations.

Procedural status: proceedings have commenced in state automatic appeal and habeas review.

Covarrubias Sanchez, Daniel

Case facts: On 28 July 1995, Mr. Covarrubias, aged 28, was kidnapped by bounty hunters in Mexico and forcibly returned to the United States, where he was charged by law enforcement authorities of Monterey, California, with robbery, burglary, and multiple murder.

On 8 September 1998, Mr. Covarrubias was convicted of murder. At the penalty phase, the defense emphasized the considerable doubt concerning Mr. Covarrubias's role in the crime. The court prohibited testimony regarding Mr. Covarrubias's kidnapping or the presentation of information about the uncharged co-defendants. During their penalty the jury asked the court, "If we can't come to an agreement on a penalty, is it a mistrial or default to life in prison without parole, or does judge make decision?" The judge answered, "The consequences of a failure to reach a verdict on the question of penalty is a matter with which the jury should not concern itself. It should play no role in deliberations." Later that same day, the jury reached a death verdict. On 27 October 1998, the trial court sentenced Mr. Covarrubias to death.

VCCR violation: Mr. Covarrubias and the bounty hunters who seized him were detained at the United States border by agents of the Federal Bureau of Investigation (FBI). Although aware of his Mexican nationality at the outset and despite federal regulations requiring prompt advisement of consular rights to foreign detainees, the agents at no time informed Mr. Covarrubias of his rights to consular assistance. Mexican consular officials did not learn of Mr. Covarrubias's case until after his arraignment.

***Avena* determination:** violations of Article 36(1)(a) and (b) obligations, plus the 36(1)(c) right of consular visitation.

Procedural status: the appellant's opening brief on automatic appeal was filed on 5 April 2007; he has requested "review and reconsideration" under *Avena*.

Hoyos, Jaime Armando

Case facts: On 27 May 1992, law enforcement authorities of San Diego County, California, arrested Mr. Hoyos, aged 34, and a co-defendant during a traffic stop. Subsequently, they were charged with robbery, burglary and multiple murder. The prosecution alleged that the defendants had robbed and killed members of a family of drug dealers.

The jury deliberated for several days on Mr. Hoyos's guilt or innocence and made eight separate requests for further information of the trial judge during that time. On 7 March 1994, Mr. Hoyos and his codefendant were convicted. The jury again deliberated for several days following the penalty phase, returning a death verdict on 28 March 1994. Mr. Hoyos was formally sentenced

to death on 11 July 1994. Following a successful motion for a new trial, the prosecutor agreed to a lesser sentence of life in prison without possibility of parole for Mr. Hoyos's co-defendant. However, Mr. Hoyos's own motion for a new trial on the same grounds was denied and his death sentence remains in force.

VCCR violation: At the time of his arrest, police officers were aware that Mr. Hoyos was a Mexican national, as they saw and retained his valid Mexican driver's license which listed his personal data. Nevertheless, the authorities at no time informed Mr. Hoyos of his rights under Article 36. Mexico learned of his case only after Mr. Hoyos himself wrote to the consulate in September 1993 requesting assistance, some 13 months after his arrest. Upon learning of his detention, consular representatives met with trial counsel to discuss a plea bargain strategy and subsequently sent a letter to the district attorney in an effort to avoid a death sentence.

***Avena* determination:** violations of Article 36(1) (a) and (b) obligations, plus the 36(1)(c) right of consular visitation.

Procedural status: in state habeas corpus proceedings; the habeas petition includes an *Avena* claim (filed 11 September 2006).

Maciel Hernandez, Luis Alberto

Case facts: On 14 December 1995, law enforcement authorities of Los Angeles County, California arrested Mr. Maciel, aged 39, on suspicion of ordering the murder of a gang member and his family.

The bulk of the prosecution's case rested on the testimony of gang members who planned and carried out the killings. Two of those witnesses were granted immunity from prosecution. On 30 January 1998, Mr. Maciel was convicted of multiple murder. The penalty phase presentation by the defense consisted only of testimony from various family members and friends, who attested to Mr. Maciel's positive and non-violent character. No expert testimony was presented to provide an explanation for the acts of violence for which he had just been convicted, nor was the jury apprised of the details of Mr. Maciel's childhood years in Mexico. On 11 February 1998, the jury returned a death verdict. On 8 May 1998, the trial court sentenced Mr. Maciel to death.

VCCR violation: Mr. Maciel was registered with the INS as a permanent resident at the time of his arrest, a fact which would have emerged through a routine police background check. However, the authorities at no time informed Mr. Maciel of his rights to consular assistance. Mexican consular officials did not learn of Mr. Maciel's case until 28 April 1998, when his father came to the consulate to seek assistance. By that time, Mr. Maciel had already been convicted of murder and the jury had recommended a death sentence.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: the appellant's opening brief was filed 2 February 2007; a request for judicial notice of *Avena* was filed on 20 February 2007.

Manríquez Jaquez, Abelino

Case facts: On 22 February 1990, law enforcement authorities of Los Angeles County, California arrested and charged Mr. Manríquez with multiple murder. At the time of the alleged offense, he was 32 years old. It was alleged that Mr. Manríquez had committed seven gang-related murders over a one-year period.

No expert testimony was presented by the defense at either phase of the trial. On 10 September 1993, the jury found Mr. Manríquez guilty of multiple murder. Following a penalty hearing lasting only a few hours, the jury returned a death verdict on 22 September 1993. Mr. Manríquez was formally sentenced to death on 16 November 1993.

VCCR violation: Although Mr. Manríquez is a primarily Spanish-speaking Mexican citizen and is not a citizen of the United States, the authorities never informed him of his consular rights. Trial counsel did not raise the violation of Mr. Manríquez's rights under Article 36 at either the pre-trial or trial stages. Mexican consular officials did not become aware of the case until June 1991, when they were contacted by defense counsel for Mr. Manríquez more than a year after his arrest.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: his state habeas petition was filed on 10 January 2008 and contains an *Avena* claim.

Mendoza Garcia, Martin

Case facts: On 25 January 1996, law enforcement authorities of San Bernardino County, California arrested Mr. Mendoza, aged 32, on multiple murder charges. Prior to his arrest, Mr. Mendoza was shot and seriously injured by police, who subsequently interviewed him in English and partially in Spanish at two hospitals.

On 28 August 1997, Mr. Mendoza was convicted of murder. Jurors deliberated for approximately three days before returning a death verdict on 23 September 1997. The trial court sentenced him to death on 23 December 1997.

VCCR violation: Although Mr. Mendoza was registered with the INS as a permanent resident and was carrying his "green card" at the time of his arrest, the authorities failed to inform him of his right to contact his consulate. Mexican consular officials did not learn of Mr. Mendoza's case until more than a year after his arrest and immediately began providing assistance, including facilitating the processing of visas for defense witnesses, aiding in the presentation of the Vienna Convention violation at the trial level and writing to the court on behalf of Mr. Mendoza at sentencing. The violation of Mr. Mendoza's rights under Article 36 was raised in a statement of Mexican consular representatives that was read at the formal sentencing hearing.

***Avena* determination:** violations of 36(1)(a) and (b) requirements, plus the 36(1)(c) right of consular visitation.

Procedural status: entering state habeas proceedings. On automatic appeal, the California Supreme Court discussed *Avena*, determined that the trial record does not "reveal any prejudice" arising from the VCCR violation and that whether Mr. Mendoza "can establish prejudice based on facts outside of the record is a matter for a habeas corpus petition."[14]

Verano Cruz, Tomas

Case facts: On 26 October 1991, law enforcement authorities of Shasta County, California arrested Mr. Verano, aged 23, and charged him with murder. The prosecution alleged that he had killed a police officer.

At the time of his arrest on the capital charges, Mr. Verano was in pain, weak and dehydrated. He was subjected to lengthy police interrogations via an interpreter, during which he admitted that he had little or no understanding of the United States' legal system. Nevertheless, Mr. Verano's recorded statements, as presented through the English-speaking interrogator's testimony, were heavily relied upon by the prosecution to argue that he was more responsible than a co-defendant and to establish the existence of the special circumstances warranting death eligibility. On 27 July 1994, Mr. Verano was convicted of murder.

At the penalty phase, the trial court refused to allow the substitution of a defense mental health expert, despite the taint of a pending criminal charge against this psychologist and the negative publicity surrounding that charge. Although the mitigating evidence presented was not lengthy, the jury's deliberations on penalty lasted many hours. Jurors asked the court what would happen if there were a "split decision." The next day, they specifically asked to review Mr. Verano's statements and the interrogator's testimony, before finally reaching a death verdict on the following afternoon of 11 August 1994. On 9 September 1994, the trial court sentenced Mr. Verano to death.

VCCR violation: Although aware of his Mexican nationality even prior to his arrest, the authorities at no time informed Mr. Verano of his right to contact his consulate. Mexican consular officials only learned of the case in February 1993, through a letter sent by Mr. Verano's mother to the President of Mexico. Upon learning of his situation, Mexican consular officials facilitated the travel of Mr. Verano's family members from Mexico to testify during the penalty phase of the trial.

***Avena* determination:** violations of Article 36(1)(a) and (b) obligations, plus the 36(1)(c) right of consular visitation.

Procedural status: The state habeas petition contains an *Avena* claim (filed 29 November 2004).

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[14] *People v. Mendoza*, 171 P.3d 2, 20 (Cal. 2007).

In post-conviction proceedings, counsel has introduced evidence that Mr. Verano has mental retardation.

Lopez, Juan Manuel

Case facts: On 15 May 1996, law enforcement authorities of Los Angeles County, California arrested Mr. Lopez, aged 23, on suspicion of soliciting the murder of a witness to a crime, a potential death penalty offense under California law. It was alleged that Mr. Lopez had arranged for the killing of his former girlfriend by his brother. Circumstantial evidence indicated that Mr. Lopez had called several gang members from jail and had tried to recruit someone to kill the victim.

On 6 July 1998, Mr. Lopez was convicted of soliciting first-degree murder. Mr. Lopez was admitted for psychiatric treatment while awaiting trial and was heavily medicated with anti-psychotic and anti-depressant drugs throughout much of his trial. At the commencement of the penalty phase, Mr. Lopez's appointed attorney told the court that his client had requested that no mitigating evidence should be presented. After deliberating for less than 45 minutes, the jury returned a death verdict on 8 July 1998. On 18 September 1998, the trial court sentenced Mr. Lopez to death.

VCCR violation: Although Mr. Lopez's birthplace is listed on his arrest report as Tijuana, Mexico, the authorities at no time informed him of his consular rights. Mexican consular officials did not learn of the case until 4 June 2000, some four years after Mr. Lopez was sentenced to death.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: the case is fully briefed on automatic appeal. Habeas counsel has not yet been appointed.

Zamudio Jimenez, Samuel

Case facts: On 11 February 1996, law enforcement authorities of Los Angeles County, California arrested Mr. Zamudio, aged 31, on charges of robbery and murder. It was alleged that Mr. Zamudio had committed two homicides during the course of robbing a neighbor's home.

Mr. Zamudio had no prior record in the United States and insisted that he was innocent. On 15 November 1997, Mr. Zamudio was convicted of the murders. The defense case during the penalty phase consisted of presenting a series of letters and drawings done by the defendant while in jail awaiting trial. No one testified on Mr. Zamudio's behalf in an effort to mitigate his punishment. On 21 November 1997, the jury returned a death verdict. Mr. Zamudio was formally sentenced to death on 5 October 1998.

VCCR violation: Although a police computer printout indicates his place of birth as Mexico, the

authorities at no time informed Mr. Zamudio of his right to consular notification. Mexican consular officials learned of Mr. Zamudio's detention in July 1996, when they spoke to his public defender. Upon learning of his detention, consular officials began providing humanitarian and legal assistance. That assistance included obtaining visas for defense witnesses from Mexico to appear during the guilt phase and consular testimony at trial to authenticate documents.

***Avena* determination**: violations of Article 36(1)(a) and (b) obligations, plus the 36(1)(c) right of consular visitation.

Procedural status: state habeas corpus proceedings have commenced.

Esquivel Barrera, Marcos

Case facts: On 1 March 1998, law enforcement authorities of Los Angeles County, California arrested Mr. Esquivel, aged 34, on charges of murder. The police alleged that Mr. Esquivel had killed two of his children.

Mr. Esquivel did not testify at his trial, nor did his court-appointed attorney offer a defense to the charges, arguing instead that the crimes were not premeditated and therefore not eligible for the death penalty. On 17 July 2001, Mr. Esquivel was convicted of murder. The jury recommended a death sentence on 25 July 2001. On 13 December 2001, the trial court sentenced Mr. Esquivel to death.

VCCR violation: During pre-trial proceedings on 29 September 1999, the prosecution announced that Mr. Esquivel had the right to "contact and assistance of the Mexican Consul General." This formal advisement of consular rights came some 19 months after the arrest, by which time Mexican consular officers were already in contact with defense counsel. Upon learning of his situation, Mexican consular officials assisted with the production of penalty phase witnesses and expressed their concerns about the case in letters to the trial judge and to the prosecutor.

***Avena* determination:** violations of article 36(1) (a) and (b) requirements, plus the 36(1)(c) right of consular visitation.

Procedural status: automatic appeal proceedings recently commenced in this case.

Gómez Pérez, Rubén

Case facts: On 2 July 1997, law enforcement authorities of Los Angeles County, California arrested Mr. Gomez, aged 27, on charges of multiple murder, robbery, and kidnapping. The police alleged that Mr. Gomez had committed three gang-related murders in the six weeks prior to his arrest.

The prosecution argued that Mr. Gomez had implicated himself while being processed for

holding by the authorities on a robbery charge, relying for corroboration on the testimony of confidential witnesses. On 15 February 2000, Mr. Gomez was convicted on three counts of murder. During the penalty phase, Mr. Gomez's court-appointed attorney called just two witnesses in mitigation. On 29 February 2000, the jury returned a death verdict. On 31 March 2000, the trial court sentenced Mr. Gomez to death.

VCCR violation: Mr. Gomez's jail custody record correctly lists his place of birth as Mexico. Despite this clear indication of foreign nationality, the authorities failed to inform him of his rights under Article 36. Defense counsel did not contact the Mexican consulate for assistance and did not raise the violation of his clients rights under Article 36 in pre-trial or trial proceedings. Mexico first learned of the case in October 2002, more than two years after his trial concluded.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: automatic appeal proceedings recently commenced in this case.

Juárez Suárez, Arturo

Case facts: On 15 July 1998, law enforcement authorities in Long Beach, California arrested Mr. Juarez, aged 30, on multiple murder charges. The police alleged that Mr. Juárez had killed four members of a family related to him by marriage.

On 18 April 2001, Mr. Juarez was convicted of murder. During the penalty phase, jurors were told by the defense that the crimes were totally out of character for Mr. Juárez, who was described by family, friends, employers and acquaintances as a hard-working, generous provider who had never before been in trouble. On 20 June 2001, the jurors returned a death verdict. On 8 March 2002, the trial court sentenced Mr. Juárez to death.

VCCR violation: At the time of his arrest, the authorities did not inform Mr. Juárez of his right to contact his consulate, even though his arrest report clearly indicates Mexico as his place of birth and that he had a Mexican passport. Despite this clear statement of nationality, Mr. Juárez was only informed of his consular rights during his arraignment on 17 July in Placer County, by which time he had already given incriminating statements to the police. Mexico assisted the defense by obtaining visas for witnesses and submitting an affidavit in support of the defense motion to suppress the statement made under interrogation.

***Avena* determination:** violation of Article 36(1)(b) obligation to inform the detainee of his consular rights without delay.

Procedural status: automatic appeal proceedings recently commenced.

Parra Dueñas, Enrique

Case facts: On 30 October 1997, law enforcement authorities of Los Angeles County, California, arrested Mr. Parra, aged 23, for murder. The prosecution alleged that Mr. Parra had shot and killed a police officer to avoid arrest.

Defense counsel presented no witnesses and made no closing argument during the guilt phase of the trial. Mr. Parra was convicted of first-degree murder on 2 December 1998. Following his conviction, Mr. Parra immediately submitted motions to the trial court seeking a mistrial and the discharge of his appointed counsel. The motions were summarily denied. Despite the fact that Mr. Parra had strong ties with Mexico and had lived there for most of his life, only one relative was brought from Mexico to testify. No mental health or other expert testimony was presented by the defense during its brief penalty trial presentation. After deliberating for less than 90 minutes, the jury rendered a death verdict on 8 December 1998. On 22 January 1999, the trial court sentenced Mr. Parra to death.

VCCR violation: Despite clear indications of foreign nationality such as his known place of birth and limited command of English, the authorities at no time informed Mr. Parra of his consular rights. By the time Mexico finally learned of his case on 26 January 1999, Mr. Parra had already been sentenced to death. In November 1999, Mexican consular representatives met with the Los Angeles District Attorney to convey their deep concern over the case and the ongoing non-compliance by local authorities with article 36 obligations.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: automatic appeal proceedings recently commenced in this case.

Lupercio Casares, Jose

Case facts: On 9 April 1989, law enforcement authorities of Kern County, California arrested Mr. Lupercio, aged 32, on suspicion of murder. It was alleged that Mr. Lupercio and a co-defendant had committed murder and attempted murder during the commission of a robbery.

On 6 November 1991, Mr. Lupercio was convicted of murder. On 13 March 1992, the trial court sentenced Mr. Lupercio to death.

VCCR violation: Although Mr. Lupercio was registered as a permanent resident with the INS at the time of his arrest, the authorities at no time informed Mr. Lupercio of his consular rights. Trial counsel did not raise the violation of Mr. Lupercio's rights under Article 36 and did not contact Mexican consular officials. Mexican consular officials did not learn of the case until July 1992, more than three years after Mr. Lupercio's arrest, when authorities at the San Quentin Prison informed the Mexican Consulate that Mr. Lupercio was a Mexican national who had arrived on death row. After finally being apprised of the case, consular officials have provided ongoing legal and humanitarian assistance, including consular visits and correspondence with Mr. Lupercio, authentication of records, documentation of family history, and translation assistance.

***Avena* determination:** violations of all Article 36(1) rights and obligations

Procedural status: the case is still in the early stages of automatic appeal, due to the dismissal of his previous court-appointed appellate counsel for non-performance.

Ramirez Villa, Juan de Dios

Case facts: On 19 July 1998, law enforcement authorities in El Paso, Texas arrested Mr. Ramirez, age 21, on a charge of carjacking and murder. Following his arrest, Mr. Ramirez was returned to Kern County, California to face prosecution.

On 12 March 2001, Mr. Ramirez was convicted of murder. During the penalty phase, the prosecution alleged as an aggravating factor that Mr. Ramirez had committed a prior murder, despite the fact that another individual had been prosecuted for and convicted of that crime. On 20 July 2001, the trial court sentenced Mr. Ramirez to death.

VCCR violation: Mr. Ramirez was arrested by United States border authorities after he presented his INS identification to them, but failed to inform him of his consular rights. Consular officers were unaware of Mr. Ramirez's case until several months after his arrest. Upon learning of his case, consular officials communicated with defense counsel, attended court hearings, and subsequently sent a detailed letter in support of a reduced sentence, based on the Vienna Convention violation. The Government of Mexico also intervened directly, writing to the Superior Court in support of the defendant's petition for review and stay of the trial court proceedings based on a motion for a change of venue.

***Avena* determination:** violations of Article 36(1) (a) and (b) obligations, plus the 36(1)(c) right of consular visitation.

Procedural status: automatic appeal proceedings recently commenced.

Salazar Nava, Magdaleno

Case facts: On 7 November 1995, law enforcement authorities of Los Angeles County, California arrested Mr. Salazar, aged 19, on a charge of murder. The prosecution alleged that Mr. Salazar had fired upon and killed the victim during a struggle between the victim and Mr. Salazar's co-defendant.

After a brief trial, the jury retired to consider its verdict. During those deliberations, the jurors sent this question to the trial judge: "What happens if the jury is unanimous for a verdict of murder but cannot agree on first or second degree?" The judge provided no additional guidance. On 4 February 1999, after approximately two days of deliberations, the jury convicted Mr. Salazar of first-degree murder.

At the penalty phase of the trial, the defense presentation of mitigating evidence consisted of the brief testimony of three lay witnesses; the defense presented no expert testimony or evidence regarding his origins in Mexico. After instructions from the trial judge, the jury began deliberations on the appropriate sentence. The next day, while the jurors were still deliberating on the penalty, they sent a note to the judge asking what would happen if they could not decide between life and death. The judge answered, "I regret I am unable to answer that question." The following morning, on 10 February 1999, the jury returned a death verdict. Three weeks later, on 12.March, the trial court sentenced Mr. Salazar to death.

VCCR violation: Mr. Salazar was born in Mexico and is not a United States citizen, facts that would have become apparent to the arresting authorities through a routine background check. Mexico first learned about the case in October 2002, more than 3 years after the trial concluded. Among other forms of assistance, it is asserted that consular officers would have aided the defense in the investigation and presentation of mitigating testimony and evidence available only in his native country.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: Automatic appeal proceedings recently commenced in this case.

Sanchez Ramirez, Juan Ramon

Case facts: On 4 August 1997, law enforcement authorities of Tulare County, California arrested Mr. Sanchez, aged 32, on two counts of murder.

After his arrest, Mr. Sanchez underwent interrogations over a three-day period, during which the authorities did not inform him of his right to contact his consulate. Mr. Sanchez also asserted that he had asked for and was denied a translator throughout his interrogations and that his statement was coerced. After a hearing at which Mexican consular officers testified, the trial court held that it was "speculative" that Mr. Sanchez would have exercised his *Miranda* rights had he received consular assistance; any violation of his consular rights was therefore not prejudicial.

At trial, the prosecution based its case on the eye-witness identification of Mr. Sanchez by a 5-year-old child, along with the defendant's statement to the police. The defense asserted that identification by such a young eyewitness was inherently reliable and was the result of a highly suggestive identification process; physical evidence at the scene also indicated perpetrators other than the defendant. Mr. Sanchez was convicted of the murders on 4 November 1999. The jury returned a death verdict on 12 November 1999. Mr. Sanchez was formally sentenced to death on 31 March 2000.

VCCR violation: Mr. Sanchez was born in Mexico and is not a United States citizen, facts that would have become apparent to the arresting authorities through a routine background check. Mexican consular officials first learned of the case 15 days after Mr. Sanchez's arrest and assisted the defense in raising the treaty violation at a suppression hearing. On 27 April 1999,

Mexico presented a diplomatic note to the U.S. Department of State expressing its concerns over the violation of Article 36 in this case.

***Avena* determination:** violations of Article 36(1) (a) and (b) obligations, plus the 36(1)(c) right of consular visitation.

Procedural status: Automatic appeal proceedings recently commenced in this case.

Vargas, Eduardo David

Case facts: On 4 April 1999, law enforcement authorities of Orange County, California arrested Mr. Vargas, aged 22, on suspicion of murder. The police alleged that Mr. Vargas and several other individuals had robbed the victim and that Mr. Vargas then fatally shot him.

At trial, the prosecution presented testimony from Mr. Vargas' co-defendant, who implicated him in the crime, as well as the testimony of two other gang members who were given immunity in exchange for their testimony against him. On 9 February 2001, Mr. Vargas was convicted of first-degree murder. The defense presentation during the penalty phase consisted solely of testimony from several members of Mr. Vargas' family. After a brief deliberation, the jury returned a death verdict on 23 February 2001. The trial court formally imposed a death sentence on 4 October 2001.

VCCR violation: Although immigration officials notified Mr. Vargas of his consular rights in connection with deportation proceedings, upon his detention on suspicion of murder, despite knowledge of his Mexican nationality, criminal justice authorities at no time informed Mr. Vargas of his consular rights. Mexican consular officials did not learn about the case until 28 February 2001, when they received a telephone call from Mr. Vargas's mother. By this time, Mr. Vargas had already been convicted and the jury had returned a death sentence. Upon learning of Mr. Vargas's situation, Mexican authorities immediately intervened by submitting legal arguments to the trial judge based on the Vienna Convention violation.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: Mr. Vargas's automatic appeal proceedings recently commenced.

IV. "REVIEW AND RECONSIDERATION" OF THE CONVICTION ONLY

Regalado Soriano, Oswaldo

Case facts: On 18 November 1992, law enforcement authorities in Randall County, Texas, arrested Oswaldo Regalado Soriano on suspicion of murder. The police alleged that he and a co-defendant had robbed a store, in the course of which the store clerk was shot and killed.

At the time of his arrest, Mr. Regalado was seventeen years old. He had only a ninth grade education. Moreover, he was learning disabled, was enrolled in special education classes, and was able to read only at the level of a fourth grade student. At trial, prosecutors relied heavily on Mr. Regalado 's confession to prove his guilt. On 29 April 1994, he was convicted of murder. During the penalty phase, the defense called just two witnesses. On 4 May 1994, the trial court sentenced Mr. Regalado Soriano to death.

VCCR violation: Although prosecutors obtained Mr. Regalado's resident alien card and birth certificate indicating that he was born in the State of Chihuahua, Mexico, the authorities failed to inform Mr. Regalado of his rights under Article 36. Mexican consular officials eventually learned of Mr. Regalado's detention on 27 June 1995, when he wrote to them from death row. Upon learning of his situation, Mexican contacted appellate counsel for Mr. Regalado and assisted in the filing of a supplemental brief on appeal raising the Article 36 violation.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: His death sentence was reduced to life imprisonment as a result of the 2005 U.S. Supreme Court decision in *Roper v. Simmons* (finding the death penalty unconstitutional for juvenile offenders).

Plata Estrada, Daniel Angel

Case facts: On 7 May 1995, law enforcement authorities in Harris County, Texas arrested Daniel Angel Plata Estrada, aged 19, on suspicion of murder. Mr. Plata was subsequently charged with capital murder in connection with the robbery and murder of a convenience store clerk.

The entire guilt phase of Mr. Plata's trial lasted a mere two and a half days. Counsel for Mr. Plata presented no evidence or witnesses on his behalf. After the prosecution presented its case, Mr. Plata entered a plea of no contest (*nolo contendere*) upon the advice of his attorneys. He received no promise of leniency in exchange for his plea. On 14 October 1996, he was convicted of capital murder. Trial counsel failed to conduct an investigation in Mexico; as a consequence, compelling mitigating evidence and testimony regarding his severe mental disabilities was never presented to the sentencing jury. After deliberating on the penalty for less than half an hour, the jury returned a death verdict on 18 October 1996, and the trial court sentenced him to death that same day.

VCCR violation: Although Mr. Plata provided a written statement to the authorities declaring that he was born in Mexico, the authorities at no time informed Mr. Plata of his consular rights. On 30 January 1997, Mexican consular authorities learned of Mr. Plata's detention, without the assistance of the authorities from Texas or the United States. By that time, Mr. Plata was already under sentence of death. Among other actions, Mexico succeeded in persuading the federal court to appoint new counsel, after discovering that Mr. Plata's previous lawyer had missed an important deadline. In addition, Mexico retained counsel to file amicus curiae briefs in the federal district court and the United States Court of Appeals for the Fifth Circuit.

Avena determination: violations of all Article 36(1) rights and obligations.

Procedural status: On 18 January 2008, Mr. Plata's death sentence was reversed by the Texas Court of Criminal Appeals on grounds of mental retardation, as a result of which he was automatically re-sentenced to life imprisonment. He had raised an *Avena* claim with the U.S. Fifth Circuit Court of Appeals, which denied his request for a Certificate of Appealability on 16 August 2004.

Carrera Montenegro, Constantino

Case facts: On 12 April 1982, law enforcement authorities of Kern County, California arrested Mr. Carrera and charged him with two counts of first-degree murder in connection with the murder and robbery of a couple who managed a local motel. At the time of his alleged offense, Mr. Carrera was 20 years old and had no prior criminal record.

The prosecution alleged that Mr. Carrera and Ramiro Ruiz Gonzales planned to rob the motel where Ruiz was formerly employed. At the Ruiz trial, the prosecution alleged that Mr. Ruiz was the instigator and main assailant and that Mr. Carrera played a lesser role. However, at Mr. Carrera's subsequent trial, the same prosecutor was permitted to argue a different theory of the crime by alleging that Mr. Carrera was the main actor. The prosecution's case relied largely on the testimony of witnesses who received immunity from prosecution, as well as the testimony of jailhouse informants. On 27 July 1983, following some four days of jury deliberation, Mr. Carrera was convicted of the robbery and both murder charges. He was sentenced to death on 14 October 1983.

VCCR violation: Although he was registered with the INS as a permanent resident at the time of his arrest, the authorities at no time informed Mr. Carrera of his consular rights. On 14 February 1992, prison officials sent a letter to the Mexican Consulate, apprising Mexico of Mr. Carrera's nationality. More than nine years after Mr. Carrera's arrest and nearly three years after the denial of his direct appeal, Mexico finally learned that he was under sentence of death.

***Avena* determination**: violations of all Article 36(1) rights and obligations.

Procedural status: On 13 March 2008, Mr. Carrera's death sentence was invalidated in federal habeas proceedings, on grounds of prosecutorial misconduct and inadequate jury instructions regarding the special circumstances necessary to find him eligible for the death penalty. A successive state habeas petition based on *Avena* was filed on 23 February 2006 and is still pending.

Gabriel Solache

Case facts: On 3 April 1998, law enforcement authorities in the State of Illinois arrested Gabriel Solache Romero, aged 27, on suspicion of murder. The prosecution accused Mr. Solache, along

with Adriana Mejia and Arturo Reyes, of kidnapping two young children and murdering their parents.

At the time, Mr. Solache was a tenant in the home of Ms. Mejia and her husband. According to the state's theory, Adriana Mejia was the mastermind behind the crime. In the months leading up to the kidnapping, Mejia had deceived her husband into believing she was pregnant. She told him she was to give birth in March 1998. Since she was not actually pregnant, she devised the kidnapping scheme to prevent her husband from learning the truth about her condition. On 3 April 1998, Mr. Mejia, Mr. Solache and another tenant brought one of the children to the police station after seeing televised reports about the murder and abductions. Shortly thereafter, all three men were arrested.

Mr. Solache was held for the next forty hours and interrogated. In response to his initial interrogation, Mr. Solache explained that he had nothing to do with the crime. He was then taken to a small room and was chained to a wall. He was given a small jar in which to urinate. There, he was interrogated by a detective who has repeatedly been accused of brutality and other forms of misconduct throughout his career. Mr. Solache testified that whenever he denied involvement in the crime, the detective repeatedly struck him on the side of the face. Eventually, a state's attorney entered the interrogation room. She did not speak Spanish. While Mr. Solache spoke, the detective "translated" Mr. Solache's purported confession into English. Although Mr. Solache did not speak English at the time, he then signed the written confession in English.
On 20 June 2000, Mr. Solache was convicted of murder, and on 17 January 2001, the trial court sentenced him to death

VCCR violation: Although the police were well aware of his Mexican nationality, they failed to inform Mr. Solache of his Article 36 rights. On 6 April 1998, three days after Mr. Solache's arrest, Mexican consular officials learned of Mr. Solache's detention through media reports. In February 1999, nearly one year after Mr. Solache's arrest, Chicago authorities informed the Mexican consulate of his detention. A Mexican consular officer testified at length at a pre-trial suppression hearing regarding the assistance that would have been provided had the consulate learned of the case without delay.

***Avena* determination:** violations of all Article 36 (1)(a) and (b) provisions, plus the 36(1)(c) right of consular visitation.

Procedural status: On January 11, 2003, Illinois Governor George Ryan commuted Mr. Solache's sentence to life imprisonment without the possibility of parole. On 11 December 2006, the First District Appellate Court of Illinois remanded his case for the consideration of new evidence indicating that his confession was coerced.

Fong Soto, Martin Raul

Case facts: On 9 September 1992, law enforcement authorities in the State of Arizona arrested Martin Raul Fong Soto, aged 17, on suspicion of murder for a crime allegedly committed when he was seventeen years old. It was alleged by the authorities that Mr. Fong Soto and two

accomplices had robbed a local market where Mr. Fong Soto was previously employed, during the course of which three people were shot and killed.

On 27 October 1993, Mr. Fong Soto was convicted of murder. At the penalty phase hearing, the defense presented very little mitigating evidence. Among the statutory mitigating factors noted by the trial court were the absence of an extensive or violent prior record, as well as Mr. Fong Soto's young age, gainful employment and supportive family. Nonetheless, Mr. Fong Soto was sentenced to death on 3 February 1994.

VCCR violation: During his initial appearance in court for arraignment, the prosecution cited his nationality as a basis for the denial of bail. Although clearly aware of his Mexican nationality, the authorities never informed Mr. Fong Soto of his rights under Article 36.
On 21 March 1997, Mexico finally learned that Mr. Fong Soto was imprisoned in the United States and awaiting execution, nearly five years after his arrest and three years after he had been sentenced to death.

On 20 August 1999, Mr. Fong Soto presented a petition for a writ of habeas corpus in the state court of first instance, requesting that the court review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention. That court rejected the assertion of this and other claims based on "procedural default." The state court refused even to consider an amicus curiae brief filed by the Government of Mexico on the issue.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: Mr. Fong Soto's death sentence was commuted to life imprisonment as a result of the 2005 U.S. Supreme Court decision in *Roper v. Simmons* (finding the death penalty unconstitutional for juvenile offenders). He has presented new evidence that the lead detective in charge of his prosecution was indicted for perjury, in connection with his testimony in the trials of Mr. Fong Soto's co-defendants. The lead prosecutor in his case has also been cited for ethics violations, and new evidence has surfaced that casts serious doubt on the integrity of the police investigation in this case. Mr. Fong Soto continues to insist on his innocence of the charges for which he was convicted and sentenced to death.

Caballero Hernández, Juan

Case facts: On 3 March 1979, law enforcement authorities in Chicago, Illinois arrested Juan Caballero Hernández, a Mexican national, on suspicion of murder. It was alleged that Mr. Caballero and three co-defendants were responsible for a gang-related triple homicide.

At the time of his arrest, Mr. Caballero was 18 years old. He had no prior criminal record aside from a single misdemeanor charge. Trial counsel did not raise the Article 36 violation and did not contact the Mexican consulate for assistance, even though he was aware of Mr. Caballero's foreign nationality. His trial counsel spoke no Spanish, and had difficulty communicating with some of Mr. Caballero's family members, who spoke no English. On 24 March 1980, Mr. Caballero was sentenced to death. Mr. Caballero was the only Mexican national among the

accused and the only person to receive a death sentence.

VCCR violation: At no time during his pre-trial detention and subsequent capital murder trial did the authorities notify him of his rights under Article 36. In January of 1983, Mexico finally learned that Mr. Caballero was imprisoned in the United States and awaiting execution. On 2 October 1998, with the assistance of Mexican consular officers, Mr. Caballero presented a supplemental petition for writ of habeas corpus in the Circuit Court of Cook County, Illinois, requesting that the court review his conviction and death sentence in light of the authorities' violation of Article 36.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: Governor George Ryan commuted the death sentence to life imprisonment without parole on January 11, 2003. On 18 March 2003, the county circuit court granted the state's motion to dismiss his habeas petition raising the Article 36 violation. In subsequent proceedings, Mr. Caballero has raised an *Avena* claim.

V. CASES IN WHICH *AVENA* REQUIREMENTS NO LONGER APPLY

Jose Ernesto Medellín Rojas

Case facts: On 29 June 1993, law enforcement authorities in the State of Texas arrested Jose Ernesto Medellín Rojas, aged 18, on suspicion of murder. He and three other young men were charged with the sexual assault and murder of two young women on 24 June 1993.

During the course of the investigation and prosecution of Mr. Medellín's case, his court-appointed lead counsel was under a six-month suspension from the practice of law for ethics violations in another case. He continued to represent Mr. Medellín while suspended. Prior to Mr. Medellín's trial, his lead counsel was held in contempt of court and arrested for violating his suspension; time that should have been spent on preparing his client's defense went instead to preparing and filing a habeas corpus petition to keep himself out of jail. Documents later found in the attorney's files also indicate that his personal and professional life were falling apart during the time his attention should have been focused on zealous representation of Mr. Medellín. In addition, he suffered from acute health problems that led to his death shortly after the trial.

Given his failing health, personal problems, suspension from the practice of law and a history of disciplinary problems before the Texas State Bar, counsel was ill-equipped to defend Mr. Medellín. Billing records indicate that the only investigator for the defense spent a total of eight hours on the investigation prior to the commencement of jury selection, including the time he spent with Mr. Medellín. During jury selection, the defense failed to strike jurors who indicated they would automatically impose the death penalty. During the guilt phase of the trial, the defense called no witnesses.

On 16 September 1994, Mr. Medellín Rojas was convicted of one count of capital murder. The defense presented virtually no evidence in mitigation: the entire penalty phase defense lasted less than two hours. On 11 October 1994, the trial court sentenced him to death.

VCCR violation: Mr. Medellín told the police he was born in Laredo, Mexico upon his arrest, Later that same day, Mr. Medellín was interviewed by other authorities for the purpose of determining whether he should be released on bail. He again told these authorities he had been born in Mexico, and was not a U.S. citizen. However, he was never advised of his rights to contact and seek the assistance of Mexican consular officials. On 29 April 1997, consular authorities learned for the first time of Mr. Medellín's detention when he wrote to them from death row more than two years after the trial concluded and after the disposition of the direct appeal.

Through a preliminary mitigation investigation funded by the Mexican Consulate, it has now been ascertained that Mr. Medellín grew up in an environment of abject poverty and violence, and that he suffered from depression, suicidal tendencies and alcohol dependency. Had trial counsel sought consular assistance, experts and investigators would have been retained by the Mexican Consulate to present the full range of mitigating evidence to the sentencing jury. In addition, consular monitoring of the case in the pre-trial stages would have exposed and rectified the glaringly inadequate legal representation that Mr. Medellín was receiving.

***Avena* determination:** violations of all Article 36(1) rights and obligations.

Procedural status: on March 25, 2008, the U.S. Supreme Court upheld the finding of the Texas Court of Criminal Appeals that the *Avena* Judgment was not directly enforceable domestic federal law that preempted state limitations on filing of successive habeas petitions. The Court also found that the responsibility for meeting the United States' "plainly compelling" international obligations under the *Avena* Judgment rests with Congress. *Medellín v. Texas*, 128 S.Ct. 1346 (U.S. 2008). Mr. Medellín was executed in Texas on 5 August 2008, after the Supreme Court held that the prospects for implementing legislation were at that time too remote to warrant a stay.
Other cases:

NAME	STATE	STATUS
Mario Flores Urbán	Illinois	deported after commutation, release
Osbaldo Torres Aguilera	Oklahoma	Death sentence ommuted; judicial determination of *Avena* prejudice only at penalty phase
Rafael Camargo Ojeda	Arkansas	Re-sentenced to life imprisonment on grounds of mental retardation, after waiver of all appeals

SUGGESTED STATUTORY MODELS FOR IMPLEMENTATION OF THE AVENA JUDGMENT

Model I:

Notwithstanding any other law, the federal courts shall provide review and reconsideration of the convictions and sentences of the individuals named in the judgment of the International Court of Justice in Avena and Other Mexican Nationals, to determine whether each defendant was prejudiced by the violation of Article 36 of the Vienna Convention on Consular Relations in his case.

Additional Possible Language at the Beginning:
"[In order to uphold the treaty obligations of the United States under the United Nations Charter, Statute of the International Court of Justice, the Vienna Convention on Consular Relations and the Optional Protocol to the Vienna Convention on Consular Relations], the federal courts shall provide review and reconsideration…

Model II:

1. This legislation shall be known as the Protecting Americans' Treaty Rights through Implementation Act (PATRIA).

2. In order to better safeguard the consular treaty rights of Americans abroad, and to give effect to the United States' remaining obligations under the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, 21 U.S.T. 325,

   a) Notwithstanding any other law, the federal courts shall implement the operative requirements of the Judgment of March 31, 2004 arising under the aforementioned Optional Protocol in any remaining case identified by the President of the United States in his February 28, 2005 Memorandum to the Attorney General.

   OR

   b) Notwithstanding any other law, the federal courts shall implement the February 28, 2005 Memorandum of the President of the United States to the Attorney General by providing review and reconsideration of the remaining cases identified in the Judgment of March 31, 2004.

This information is provided on behalf of the Embassy of Mexico.

OR

c) Notwithstanding any other law, the February 28, 2005 Memorandum of the President of the United States to the Attorney General shall be given effect by having the federal courts provide the judicial review and reconsideration specified in the Memorandum.

SELECTED AMICI PARTIES IN MEDELLÍN V. TEXAS

(Amici briefs presented in support of Petitioner Medellín in U.S. Supreme Court Cases No. 04-5928 (2004-2005 proceedings) and/or No. 06-984 (2007-2008 proceedings))

Party Name: United States of America

Department of Justice
Paul D. Clement, Solicitor General
Alice S. Fisher, Assistant Attorney General
Michael R. Dreeben, Deputy Solicitor General
Irving L. Gornstein, Assistant to the Solicitor General
Robert J. Erickson, Attorney

Department of State
John B. Bellinger, III, Legal Adviser

Party Name: Former United States Diplomats

Amici have served as Senior State Department Officials, Ambassadors, and Legal Advisers to the U.S. Department of State, representing the government of the United States at home and abroad in both Republican and Democratic administrations.3 See Crosby v. National Foreign Trade Council, 530 U.S. 363, 385 (2000) ("[O]pinions of senior National Government officials are competent and direct evidence of the frustration of congressional objectives by [a] state Act."). Amici vary widely in their views regarding whether or not the death penalty can ever be lawfully administered and do not express any opinion on what the ultimate resolution of Petitioner's conviction and sentence should be after review and reconsideration. Some of the signatories of this brief also disagree as to the correctness and merits of the ICJ's interpretations of the Vienna Convention. But all Amici agree that, so long as the United States adheres to the Optional Protocol, it is obliged to abide by those decisions, and that this Court's failure to respect the ICJ's judgment in Avena would significantly impair the credibility of American diplomats in the international arena. Refusing to respect the ICJ's final judgment in Avena would violate U.S. obligations under four interconnected treaties that the President and Senate ratified—the Vienna Convention, its Optional Protocol, the United Nations Charter, and the annexed Statute of the ICJ.4 To affirm the Fifth Circuit and condone such multiple treaty violations would impair important U.S. foreign policy interests and reduce American standing in the world community.

Madeleine K. Albright served as U.S. Secretary of State from 1997-2001 and as Permanent Representative to the United Nations from 1993 to 1997.

Stephen W. Bosworth is Dean of the Fletcher School of Law and Diplomacy at Tufts University. During his diplomatic career, he served as U.S. Ambassador to the Republic of Korea, U.S. Ambassador to the Philippines, U.S. Ambassador to Tunisia, Director of the State Department Policy Planning Staff, Principal Deputy Assistant Secretary for Inter-American

Affairs, and Deputy Assistant Secretary for Economic Affairs. He has also served as Executive Director of the Korean Peninsula Energy Development Organization (KEDO) and President of the United States-Japan Foundation.

Jeffrey Davidow is the president of the Institute of the Americas at the University of California, San Diego. He served as U.S. Ambassador to Mexico from 1998 to 2002, under both President Clinton and President Bush, and as U.S. Ambassador to Zambia (1988-1990), and Venezuela (1993-1996). From 1996 to 1998, he was assistant Secretary of State for Inter-American Affairs. After 34 years in the State Department, he retired with the personal rank of Career Ambassador.

Herbert J. Hansell served as the Legal Adviser of the U.S. Department of State from 1977 to 1979, Member of the Permanent Court of Arbitration, The Hague, from 1978-1980, and Senior Adviser and Ambassador to the Mideast Peace Negotiations in 1980. He served as Adviser to the United States Trade Representative on international investment in 1980, and as Adviser to the American Law Institute Restatement of the Foreign Relations Law of the United States. He is also Retired Partner at the law firm of Jones Day.

James R. Jones is a partner with Manatt, Phelps and Phillips LLC, and National Chairman of the World Affairs Council of America. From 1973 to 1987, he was a member of the U.S. House of Representatives from Oklahoma. During his tenure in Congress, he was Chairman of the House Budget Committee and a ranking member of the Ways and Means Committee. From 1989 to 1993, he was Chairman and Chief Executive Officer of the American Stock Exchange. He served as the U.S. Ambassador to Mexico from 1993 to 1997, and was awarded by President Ernesto Zedillo the Aztec Eagle Award, the highest award that can be given to a non-Mexican.

James C. O'Brien served as Special Presidential Envoy for the Balkans from 2000 to 2001, as Principal Deputy Director of the State Department Policy Planning Staff from 1998 to 2000, and as a State Department official from 1989 to 2001.

John O'Leary served as U.S. Ambassador to Chile from 1998 to 2001. He is currently a Principal of O'Leary & Barclay LLC, and a Member of the Board of Directors of the Council of American Ambassadors and of the Association for Diplomatic Studies and Training.

Thomas R. Pickering served as the Under Secretary of State for Political Affairs from 1997 to 2001, and was the U.S. Ambassador and Permanent Representative to the United Nations from 1989 to 1992. A Career Ambassador, during his diplomatic career, he also served as Assistant Secretary of State for Oceans, Environment and Science, U.S. Ambassador to The Russian Federation, U.S. Ambassador to India, U.S. Ambassador to Israel, U.S. Ambassador to El Salvador, U.S. Ambassador to Nigeria, U.S. Ambassador to The Hashemite Kingdom of Jordan, and Executive Secretary of the Department and Special Assistant to the Secretary. He was also President of the Eurasia Foundation.

J. Stapleton Roy is Managing Director of Kissinger Associates, Inc. A Career Ambassador, he served as U.S. Ambassador to Indonesia, U.S. Ambassador to the Peoples' Republic of China, and U.S. Ambassador to Singapore. He also served as Assistant Secretary of State for

Intelligence and Research, Executive Secretary of the Department and Special Assistant to the Secretary, and as Deputy Assistant Secretary for East Asian and Pacific Affairs.

Nancy Soderberg is the Vice-President for Multilateral Affairs at the International Crisis Group, and served as Deputy Assistant to the President for National Security Affairs and as the U.S. Ambassador and Representative for Special Political Affairs at the United Nations. Abraham D. Sofaer is a Senior Fellow at the Hoover Institution, Stanford University, and Professor of Law (by Courtesy) at the Stanford Law School. He served as a federal district judge in the Southern District of New York from 1979 to 1985. From 1985 to 1990 he served as Legal Adviser at the US Department of State.

Strobe Talbott served as Deputy Secretary of State from 1994-2001, and Ambassador-at-large and Special Advisor to the Secretary of State for the former Soviet Union from 1993-1994.

Malcolm R. Wilkey is a retired Circuit Judge of the U.S. Court of Appeals for the D.C. Circuit, where he served from 1970 to 1985, and is a former U.S. Ambassador to Uruguay (1985-90). He also served as Adviser to the American Law Institute Restatement of the Foreign Relations Law of the United States from 1979 to 1986.

Frank G. Wisner is Vice-Chairman of the American International Group. A Career Ambassador, he served as U.S. Ambassador to India, U.S. Ambassador to the Philippines, U.S. Ambassador to Egypt, and U.S. Ambassador to Zambia. He also served as Under Secretary of Defense for Policy, Under Secretary of State for International Security Affairs, and Senior Deputy Assistant Secretary of State for African Affairs.

Party Name: International Court of Justice Experts

Amici are professors and scholars of law expert in the fields of international law, international dispute settlement, and the application of international law by courts in the United States. (A List of *Amici* is set forth in the Appendix.) *Amici* are experienced in the work of international tribunals, notably the International Court of Justice (ICJ), and include former officials of the U.S. Department of State who have represented the United States at the ICJ. *Amici* seek to present their views concerning the obligations arising from a final judgment of the ICJ interpreting a treaty of the United States in proceedings in which the United States participated fully, and the respect that should be accorded to the judgment by all courts in the United States, in the context of a petition to allow review and reconsideration of a conviction and death sentence.

Lori Fisler Damrosch is the Henry L. Moses Professor of Law and International Organization at Columbia University and editor of The International Court of Justice at a Crossroads (1987). As an attorney in the U.S. Department of State between 1977 and 1981, she was one of the counsel for the United States in United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran) 1979 ICJ 7, 1980 ICJ 3, and in the advisory opinion proceeding on Interpretation of the Agreement of 25 March 1951 between the World Health Organization and Egypt, 1980 ICJ 73.

Thomas M. Franck is Murry and Ida Becker Professor of Law Emeritus at New York University. He served as judge ad hoc of the International Court of Justice in Sovereignty Over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), 2001 ICJ 575, and as counsel for Chad in Territorial Dispute (Libya/Chad), 1994 ICJ 6, and for Bosnia- Herzegovina in the cases concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Serbia-Montenegro), 1993 ICJ 3, 325, 1996 ICJ 595, 2007 ICJ No. 91, and Application for Revision of the Judgment of 11 July 1996 (Yugoslavia v. Bosnia-Herzegovina), 2003 ICJ 7.

Richard N. Gardner is Professor of Law and International Organization at Columbia University and was previously U.S. ambassador to Italy and Spain. As Deputy Assistant Secretary of State for International Organization Affairs, he was involved in the U.S. position in the Certain Expenses of the United Nations advisory opinion proceeding, 1962 ICJ 163. He served as counsel for the United States at the ICJ in Elettronica Sicula S.p.A. (ELSI) (U.S. v. Italy), 1989 ICJ 15.

Louis Henkin is University Professor Emeritus at Columbia University and a past president of the American Society of International Law. He served as Chief Reporter for the American Law Institute's Restatement (Third) of the Foreign Relations Law of the United States and is the author of Foreign Affairs and the United States Constitution (2d ed. 1996).

Andreas F. Lowenfeld is the Herbert and Rose Rubin Professor of International Law at New York University. He served in the Office of the Legal Adviser of the U.S. Department of State between 1961 and 1966 and was Deputy Legal Adviser from 1964 to 1966. He was Associate Reporter for the American Law Institute's Restatement (Third) of the Foreign Relations Law of the United States and co-Reporter for the ALI's Project on Recognition and Enforcement of Foreign Judgments. He acted as counsel for the United States in Oil Platforms (Iran v. U.S.), 1996 ICJ 803, 2003 ICJ 161.

Bernard H. Oxman is Richard A. Hausler Professor of Law at the University of Miami and a former Assistant Legal Adviser of the U.S. Department of State. He was a legal consultant for the United States in Delimitation of the Maritime Boundary in the Gulf of Maine Area Canada/U.S.), 1984 ICJ 246. He served as a judge ad hoc of the International Tribunal for the Law of the Sea in 2003 and has been appointed as a judge ad hoc of the International Court of Justice in Maritime Delimitation in the Black Sea (Romania v. Ukraine), 2004 ICJ No. 132.

W. Michael Reisman is the Myres S. McDougal Professor of International Law at Yale University and a former member and president of the Inter-American Commission on Human Rights. He has served as counsel in Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), 2001 ICJ 40, and for the Philippines in Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), 2001 ICJ 575.

Stephen M. Schwebel was a judge of the International Court of Justice from 1981 to 2000 and its president from 1997 to 2000. Previously he served for fourteen years in the Office of the Legal Adviser of the U.S. Department of State, including as Assistant Legal Adviser and Deputy Legal Adviser, in which offices he represented the United States in the Certain Expenses of the

United Nations advisory opinion proceeding, 1962 ICJ 163; United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1979 ICJ 7, 1980 ICJ 3; and in the advisory opinion proceeding on Interpretation of the Agreement of 25 March 1951 between the World Health Organization and Egypt, 1980 ICJ 73.

Anne-Marie Slaughter is the Dean of the Woodrow Wilson School at Princeton University and past president of the American Society of International Law. She was formerly the J. Sinclair Armstrong Professor of Comparative and International Law at Harvard University.

Party Name: European Union and Members of the International Community

The European Union (EU) considers the respect for treaty based rights to be of vital importance both nationally and within the international community. This principle is common to its twenty-seven Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. Like the United States, all EU Member States are party to the Vienna Convention on Consular Relations (VCCR).2 Article 36 of the VCCR (Article 36) confers both individual and State rights. As such, the EU has an interest in securing compliance with rights guaranteed under Article 36. This position has been expressed to the Government of the United States through specific demarches in cases involving individual foreign nationals who have been deprived of their rights under Article 36. As nations committed to the rule of law, the Member States of the EU have a fundamental interest in promoting general compliance with international instruments. The EU believes that it can provide this Court with a special and unique perspective that is not available through the views of the parties.

The Council of Europe,[1] Liechtenstein, Norway and Switzerland have explicitly expressed to the European Union and its Member States their shared interest as *amici* and their support for the arguments put forward in the present brief.

Party Name: Ambassador L. Bruce Laingen, et al.

Amici are either United States citizens who have benefited from consular assistance abroad or suffered in its absence; attorneys or diplomats familiar with the importance of consular assistance; or organizations dedicated to the interests of U.S. citizens abroad.

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[1] The Council of Europe is composed of 47 Member States: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Turkey, Ukraine, and the United Kingdom.

Ambassador L. Bruce Laingen served in the United States Foreign Service from 1949 to 1987. His tours of service included assignments in Germany, Iran, Pakistan, and Afghanistan. He served as U.S. Ambassador to Malta from 1977-1979. In mid-1979, he returned to Iran for a second term as Chargé d'Affaires of the American Embassy before being held hostage in the Iran Hostage Crisis from November 4, 1979 to January 20, 1981. During the Hostage Crisis, the United States sought and secured a judgment against Iran from the International Court of Justice based on Iran's violation of the Vienna Convention on Consular Relations. Ambassador Laingen holds the Award for Valor from the Department of State, as well as the Distinguished Public Service Medal from the Department of Defense.

Billy Hayes is a filmmaker, producer and writer based in Los Angeles, California. Mr. Hayes spent five years in a Turkish prison during the 1970s, an ordeal described in his book, Midnight Express, which was made into a feature motion picture by the same name. Prompt notification of the U.S. Consulate ensured that Mr. Hayes was able to retain a lawyer, while regular consular visits throughout his incarceration provided an essential and reliable link to the outside world.

Richard Atkins practices law in Philadelphia, Pennsylvania, and has specialized for the past twenty-seven years in assisting American citizens who run afoul of the law in foreign countries. He served as Chairman of the Criminal Law Committee of the International Bar Association and has been a member for twenty-five years of the International Relations Committee of the American Correctional Association. He has testified before the Senate Foreign Relations Committee on international prisoner transfer agreements and wrote a guide to prisoner transfer treaties for the United Nations. Approximately a thousand incarcerated Americans abroad have been freed or returned with his assistance.

William D. Rogers served as Assistant Secretary of State for Inter-American Affairs from 1974-1976, and Under Secretary of State for Economic Affairs from 1976-1977. During his lengthy career as a diplomat, he played a key role in Secretary of State Kissinger's negotiations to end white rule in Rhodesia (now Zimbabwe), participated in the final Panama Canal Treaty negotiations, was special emissary for President Carter to El Salvador in 1980, co-chaired the Bilateral Commission on the Future of U.S.-Mexican Relations, and was Senior Counsel to the National Bipartisan Commission on Central America. He has also served as President of the Center for Inter-American Relations in New York, and as President of the American Society of International Law.

Founded in Geneva in 1978, **American Citizens Abroad** (ACA) is a non-profit, non-partisan organization dedicated to serving and defending the interests of U.S. citizens living outside the United States. ACA works closely to assist the U.S. Government in developing cohesive national policies dealing with Americans overseas. The organization has members in over 90 countries worldwide, including Mexico.

Established in 1973, the **Association of Americans Resident Overseas** (AARO) is a volunteer, non-partisan service organization representing the interests of the millions of Americans living and working abroad. Its mission is to ensure that Americans resident overseas are guaranteed the

same rights and privileges as their U.S. counterparts. AARO has worked to change U.S. laws and policies so that Americans abroad receive the same benefits and protection as citizens in the United States.

Founded in 1931, the **Federation of American Women's Clubs Overseas** (FAWCO) is a non-partisan network of 78 independent organizations in 38 countries around the world, with over 15,000 members. FAWCO is a non-profit U.S. corporation and a recognized NGO with special consultative status to the UN Economic and Social Council. Among its stated purposes is to defend the rights of all Americans overseas.

Amici stress that they take no position in this brief on the moral or legal propriety of capital punishment in the abstract, or whether a sentence of death is an appropriate sanction for Mr. Medellín. Some amici oppose the death penalty; some do not. All agree, however, that a failure by the domestic courts to give full effect to the rights and protections of the Vienna Convention on Consular Relations — as determined by the international court to which the United States, by treaty, committed their adjudication — would weaken the international framework of reciprocal rights and obligations essential to consular assistance to U.S. citizens, endangering the welfare of Americans abroad.

Party Name: EarthRights International

EarthRights International (ERI) is a non-profit human rights organization based in Washington, D.C., which litigates and advocates on behalf of victims of human rights abuses worldwide. ERI is counsel in several transnational lawsuits asserting state-law claims that arise partly out of conduct overseas.

Party Name: The Government of the United Mexican States

As a party to the *Avena* proceedings, Mexico has a direct interest in the implementation of the ICJ's judgment. It has been nearly three years since the ICJ ruled in *Avena*, and the United States's promise to comply with the ICJ's decision remains unfulfilled. Mexico respectfully requests that this Court uphold the promises the United States made to Mexico and the world community by ordering the review and reconsideration mandated by the International Court of Justice in *Avena*.

Party Name: Foreign Sovereigns

... *Amici* have thousands of their nationals present in the United States and must ensure that those nationals receive the consular protection and support envisaged by Article 36. *Amici*, through their consuls in the United States, rely on the notice provisions in Article 36 to ensure that *amici* may provide speedy and effective assistance when federal, state, or local authorities detain one of their nationals. Without notice under Article 36, detained nationals often lose the benefit of consular assistance in criminal proceedings."

More generally, *amici* nations have an interest in reciprocal compliance with international obligations. This includes abiding by the ICJ's judgments if a country has agreed by treaty to do so....

13 Amici: **Argentina, Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru, Uruguay, and Venezuela.**

Party Name: American Bar Association

The ABA is the world's largest voluntary professional membership organization and the leading organization of legal professionals in the United States. The ABA's membership of more than 413,000 attorneys spans all 50 states and includes attorneys in private law firms, corporations, nonprofit organizations, government agencies, and prosecutorial and public defender offices, as well as legislators, law professors, and students.

Party Name: NAFSA: Association of International Educators and U.S. Catholic Mission Association, et al.

Amici are organizations that send U.S. citizens abroad for the purpose of either engaging in study or providing missionary and relief work, groups that provide support for the work of study-abroad and missionary organizations, and U.S. citizens who have served as missionaries abroad.

Amici express no opinion in this brief on the validity of imposing a death sentence on Mr. Medellin, or on the propriety of the death penalty in general. It is their shared view, however, that government officials must give full force to the Vienna Convention's promise of access to consular assistance, and that the lower court's refusal to provide meaningful review of the treaty violation in this case will undermine the promise of access to consular assistance, on which missionaries and students rely when traveling overseas for study, volunteer work, and humanitarian projects.

Missionary Service Organizations

The **United States Catholic Mission Association** has served Catholic mission sending groups for over twenty years. The Association promotes and supports missionary activity beyond the boundaries of the United States and assists member groups to understand better the essential and integral role of work for justice in all missionary activity.

The **Maryknoll Society** of priests and brothers was established in 1911 as the Catholic Foreign Mission Society of America by the Bishops of the United States. Maryknoll's first missioners left for China in 1918. Today there are over 550 Maryknoll priests and brothers serving in countries around the world, principally in Africa, Asia, and Latin America.

The **Franciscan Mission Service** supports lay people from the United States in overseas mission. Since 1990, approximately 200 missioners have been trained and sent overseas to serve

Franciscan communities in Bolivia, Brazil, Guatemala, Honduras, Jamaica, Kenya, Namibia, Peru, Philippines, Siberia, Thailand, Zambia, and Zimbabwe. Lay Missioners live with the poor and work in clinics, hospitals, schools, parishes, and farmlands. Upon completion of their overseas assignment, Lay Missioners share their stories and seek ways to utilize their experiences in the United States, thereby promoting justice and peace throughout the world.

The **Conference of Christian Brothers** serves the United States/Toronto Region of the Brothers of the Christian Schools, the largest order of religious Brothers in the Roman Catholic Church, who are dedicated exclusively to education, particularly of the poor and disadvantaged. The Christian Brothers in the United States/Toronto Region serve in 30 states in the United States, in Toronto, and in the international missions of Africa, Asia, Latin America, and the University of Bethlehem in the Mideast. They are assisted by more than 5,000 partners in 121 institutions where they work with nearly 80,000 students. The Conference of Christian Brothers provides programs and services to all those involved in the mission of the Christian Brothers.

Jesuit Volunteers International (JVI) is a lay Roman Catholic organization. Its mission is to form leaders of tomorrow as it works for the Kingdom of God today. JVI provides volunteers to work as educators, pastoral care givers and social workers as they live in community, grow in faith, seek justice and live simply with people and communities in developing nations. Working alongside Jesuits, volunteers live a call that is rooted in the Gospel and articulated in contemporary Jesuit Theology of mission. Volunteers serve in Latin America, Asia and the Pacific, and Africa. Volunteers do not proselytize.

Medical Mission Sisters, Alliance for Justice Office is the Medical Mission Sisters' information center for global justice actions and advocacy. The Medical Mission Sisters are an international community of Catholic Sisters, including U.S. citizens, who serve in 19 countries on five continents, among people made poor, among those who have limited or no access to health care, and among those unjustly treated or oppressed.

The **Marianist Province of the United States** is a part of the Society of Mary (Marianists), an international Catholic religious order of brothers and priests. The U.S. Province has more then 600 members serving in the United States, East Africa, India, Bangladesh, Mexico, and South Korea. They work in universities, primary and secondary schools, parishes, retreat centers and in numerous areas such as social justice, spiritual formation, art, and the environment. The Province also has volunteers who serve for a year or more in some of these same areas.

Maryknoll Office of Global Concerns represents Maryknoll priests, brothers, sisters, and lay missioners in their work for justice and peace in more than thirty countries in Latin America, Asia and the Pacific, Africa, and the Middle East. The Office provides education and advocacy in consultation with Maryknollers around the world, and brings the voice of Maryknoll into policy discussions in the United Nations, the United States and other governments, international financial institutions, and the corporate world.

The **Franciscan Friars of Holy Name Province** are the largest province of Franciscan priests and brothers in the United States, with over 400 men serving the poor in the eastern United States and abroad, with missions in three continents. Rooted in the Catholic and Franciscan

tradition, the Friars foster Christian discipleship by collaborating with those whom they serve and by standing in solidarity with all people, especially the alienated, the immigrant, and the poor.

Holy Cross Associates is a post-graduate service program which offers participants an opportunity to integrate their Christian faith though service, community living, prayer, and simple living. Sponsored by the Congregation of the Holy Cross since 1978, Holy Cross Associates sends participants for both one-year domestic and two-year international placements in Chile.

Los Embajadores is an experiential service-learning program for high school and college age youth participants. Since 1988, Los Embajadores participants have been making eleven-day service trips to one of three sites in Northern Mexico to work with and live among local communities. Participants build relationships with the Mexican people and gain a firmer understanding of the social justice issues that underlie poverty.

Mission Project Service (MPS) helps Church people in less-industrialized countries obtain assistance from international agencies for their religious and socio-economic projects. At the request of dioceses, religious communities and others, MPS staff travels to give two or three-day workshops on seeking assistance from international aid organizations. During the past five years alone, they shared their expertise with Church groups in the Dominican Republic, Australia, Papua New Guinea, Fiji, Colombia, Peru, and the United States.

Medicines for Humanity is dedicated to saving childrens' lives in impoverished communities worldwide. Medicines for Humanity partners with religious groups who are serving in impoverished areas and helps local healthcare personnel to implement effective health initiatives for children.

The Office of the Missions, Roman Catholic Diocese of San Diego, provides direct support for Catholic missionary activity in a number of ways. The Office organizes trips to foreign missions for Catholic laypeople and clergy. It also provides financial aid for the work of missionary priests, sisters and lay missioners as well as dioceses in mission lands, and works to raise awareness about the worldwide mission activities of the Catholic Church.

Study-Abroad Organizations

Boston University's Division of International Programs is committed to helping students develop the knowledge, skills, and understanding that prepare them for life and work in today's global society. The Division offers a broad range of international study, internship, and fieldwork opportunities to qualified students from Boston University and other colleges and universities alike as an integral part of their education. Currently, Boston University's Division of International Programs offers 45 academic programs abroad that successfully combine students' intellectual and social development with praetical experience in life and work. Program locations include Auckland, Beijing, Belize, Burgos, Dresden, Dublin, Haifa, Geneva, Grenoble, Kyoto, London, Madrid, Menorca, Niger, Oxford, Padova, Paris, Peru, Quito, Sydney, Turkey, Venice, and Washington, D.C.

Santa Clara University School of Law and its Institute of International and Comparative Law has, since 1974, provided unique opportunities for law students and lawyers to study various aspects of international and comparative law around the globe. Each site was selected to provide students with a special emphasis on a particular international law issue, including free trade, hi-technology, and international human rights. Most programs provide internships with law offices, corporations, or groups to afford students an opportunity to participate directly in the legal affairs of the country while learning valuable lessons in legal culture and practice. Summer study abroad programs take place in Munich, Germany; Strasbourg, France; Geneva, Switzerland; Oxford, England; Tokyo, Japan; Hong Kong, Beijing, Shanghai, China; Kuala Lumpur, Malaysia; Ho Chi Minh City, Viet Nam; Singapore; Bangkok, Thailand; Sydney, Australia; Seoul, Korea; and beginning in summer 2005, Phnom Penh, Cambodia.

Syracuse University, Division of International Programs Abroad encourages Syracuse students to study abroad to experience diverse cultures and ideas. The Division of International Programs maintains academic centers in England, France, Hong Kong, Italy, Spain, and Zimbabwe. Each center has close ties to local universities, allowing students to design integrated programs of study appropriate to their academic and language abilities. In addition, the Division of International Programs Abroad has links to study abroad programs offered through other colleges and universities, giving students the opportunity to study in other countries around the world.

Fordham University's Office of International and Study Abroad Programs sponsors worldwide study abroad programs for qualifying students. Its roster includes highly competitive academic year and semester programs in the English-speaking world, Europe, Africa, the Far East, Oceania, the Middle East, and Latin America. These opportunities for study abroad help students prepare for the challenges of international citizenship by enabling them to gain an understanding of other cultures and languages and to incorporate a global dimension in their chosen field of study.

NAFSA: Association of International Educators is an association of individuals worldwide advancing international education and exchange. NAFSA has nearly 9,000 members at 3,500 institutions worldwide, representing 84 countries. Members of NAFSA share a belief that international educational exchange advances learning and scholarship, builds respect among different peoples, and encourages constructive leadership in a global community. NAFSA serves its members, their institutions and organizations, and others engaged in international education and exchange and global workforce development by setting and upholding standards of good practice; providing training, professional development, and networking opportunities; and advocating for international education.

The Council on Standards for International Educational Travel (CSIET) is a private, not-for-profit organization whose mission is to identify reputable international youth exchange programs, to provide leadership and support to the exchange and educational communities so that youth are provided with meaningful and safe international exchange experiences, and to promote the importance and educational value of international youth exchange.

LASPAU: Academic and Professional Programs for the Americas, Inc. is a nonprofit organization affiliated with Harvard University that designs, develops, and implements academic and professional exchange programs on behalf of individuals and institutions in the United States, Canada, Latin America, and the Caribbean. LASPAU designs and administers degree-granting international exchange programs, professional development workshops, symposia, and related activities that address the social, technological, economic, and environmental challenges facing the Americas. Since 1964, LASPAU has administered graduate degree academic programs of over 16,000 exchange students in U.S., Canadian, European, Latin American and Caribbean universities and regularly assists and advises U.S. students studying in Latin America.

The Institute of Current World Affairs awards Fellowships for overseas study to young women and men under 36 years of age in order to provide them with an opportunity to develop a deep understanding of an issue, country, or region outside the United States and to share that understanding with a wider public. The Institute purposefully awards its fellowships to young people, so that they may contribute what they learn through their international experience for years to come.

Youth For Understanding USA (YFU) is a non-profit educational organization partnered with a worldwide network of interdependent, yet autonomous YFU organizations in more than 50 countries, exchanging more than 4000 students annually. YFU and its organizations are committed to preparing young people for their responsibilities and opportunities in a changing, interdependent world. As a full immersion exchange program, the primary cross-cultural activity is daily living with a host family. Membership in a family, a family's community, and a local school concurrently provide an invaluable opportunity for self-learning about U.S. and other cultures. YFU USA administers competitive scholarship programs for U.S. high school students sponsored by the Finnish and Japanese governments, and also administers a sizable corporate scholarship program.

Break Away, Alternative Break Connection places teams of college or high school students in communities to engage in community service and experiential learning during their summer, fall, winter, or spring breaks. Students perform short term projects for community agencies and learn about issues such as literacy, poverty, racism, hunger, homelessness, and the environment. Break Away currently has a network of over 120 chapter schools, more than 450 nonprofit partners, and hundreds of individual members worldwide. About 139 colleges and universities in the United States are members of Break Away.

American Intercultural Student Exchange (AISE) serves over 4,000 students and host families, through various exchange programs. AISE student exchange programs are based on the belief that international student exchanges contribute to respect for other people and cultures, foster human understanding, and permit students to experience global community. AISE provides opportunities for foreign students ages 15-18 to live with host families in the U.S. and provides the same opportunities for U.S. students seeking an experience abroad. AISE has representatives in Sweden, Norway, Denmark, Finland, United Kingdom, Germany, Austria, Netherlands, Switzerland, France, Italy, Spain, Hungary, Slovakia, Argentina, Brazil, Colombia, Ecuador, Peru, Australia, New Zealand, Thailand, China, Korea, Vietnam, Japan, Mongolia, Kazakhstan, and Serbia.

Former Missionaries

Fr. Francis T. McGourn, M.M. is the Vicar General of the Maryknoll Fathers & Brothers. He has served and taught in Peru and Bolivia. He also has served as the director of the Maryknoll Center for Mission Studies.

Fr. John C. Sivalon, M.M. is the Superior General of the Maryknoll Fathers & Brothers. Father Sivalon ministered to the people of Tanzania, East Africa for 26 years (1975-01), until his election as Superior General.

William R. Burrows, Ph.D. served as a Catholic missionary in Papua New Guinea. He is now the managing editor of Orbis Books in Maryknoll, New York.

Charlotte Cook served as a Maryknoll Catholic Lay Missioner in Kenya from September 1993 to December 2002. She is now the Associate Director of the U.S. Catholic Mission Association, doing education-related work with a focus on Africa and Latin America.

Noel Dunne and Marianne Dunne served as missionaries in Peru from 1977-1986.

Sr. Janet Korn, RSM works in Mission Education for the Diocese of Rochester. She served in Chile for 16 years.

Alice P. Rieckelman, M.D. is a psychiatrist and a Maryknoll Sister. She has worked for many years in Asia, Africa, and Latin America. Much of her professional practice has focused on helping missionaries who have suffered violence, typically in foreign countries.

Fr. Adolph Menendez is a Xaverian priest. He has served in Japan and Mexico.

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U.S. INTERNATIONAL RELATIONS AND SAFETY OF AMERICANS ABROAD AT RISK IN COURT HEARING FOR JOSÉ MEDELLÍN

Experts, Traveler Urge Congress to Act to Fulfill U.S.'s Vienna Convention Obligations

HOUSTON, TX – Following a Texas state court hearing this morning, attorneys, international law experts, and an American who was incarcerated in Turkey stated that the execution of José Medellín – a Mexican national convicted of a crime in Texas without access to the Mexican consul – would jeopardize U.S. foreign relations and the safety of Americans abroad.

Speakers underscored the importance of individual states acting in accordance with the commitments made by the United States when it signed and ratified the Vienna Convention on Consular Relations and the United Nations Charter, and they stressed the need for prompt congressional action to ensure such compliance.

Professor Douglass Cassel, Notre Dame Presidential Fellow and international law expert, expressed concern about how U.S. global governmental allies and business partners will view future international treaties and agreements if the United States fails to honor its international obligations.

"We must abide by the commitments undertaken by the United States when it signed and ratified the Vienna Convention," said Cassel. "If we fail to keep our promises to our international partners, we lose our ability to protect our citizens abroad, and to preserve our nation's reputation as a reliable player on the world stage."

Billy Hayes, filmmaker, producer, and author of *Midnight Express,* emphasized that consular access while abroad is not an abstract technicality. "Millions of Americans work, study, and travel abroad every day, depending on access to the United States consulate to protect their rights as citizens in the event of an arrest or detention," said Hayes, who experienced first-hand the worst-case scenario for a United States citizen arrested and detained abroad: he endured horrific prison conditions in Turkey but survived the five-year ordeal with the lifesaving assistance of the U.S. consulate.

"The U.S. must keep its promises if we expect our international partners to do the same," he continued. "If Texas proceeds with the execution of José Medellín, Americans' rights to consular access would be jeopardized."

Today's hearing came following the U.S. Supreme Court's recent decision in *Medellín v. Texas.* The Court held that the U.S. is under a binding legal obligation to abide by an International Court of Justice ruling requiring review of the cases of Medellín and other Mexican nationals not